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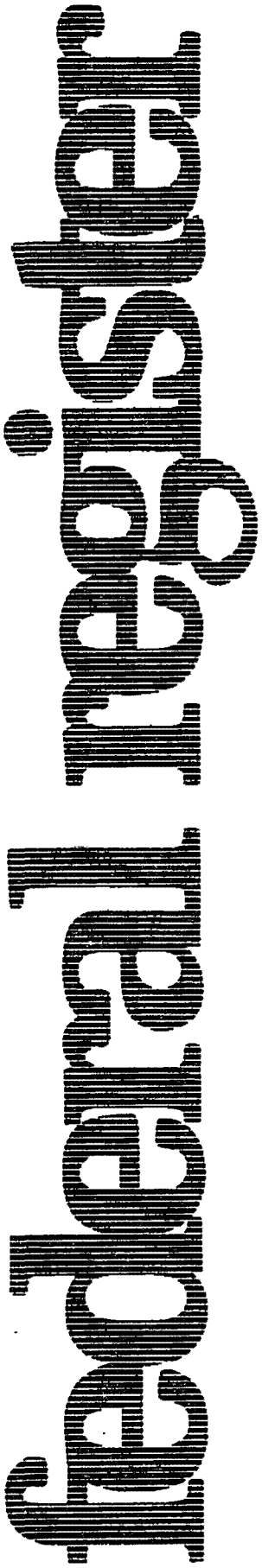

Friday
January 3, 1986

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Cotton
Agricultural Marketing Service

Electric Power
Federal Energy Regulatory Commission

Endangered and Threatened Species
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Grant Programs—Housing and Community Development
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Marketing Agreements
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

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Editorial Note: Effective January 2, the table of contents will appear in a different format. Presidential documents will now be listed alphabetically under the P's instead of at the beginning of the table of contents. The page number for an entry will be carried on the right at the end of the entry. This new format will simplify production procedures for both the table of contents and the **Federal Register Index.**

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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Friday, January 3, 1986

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 620]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 620 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 3 through January 9, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 620 § 907.920) is effective for the period January 3–9, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 30, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges has become slightly better. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.920 is hereby added to read:

§ 907.920 Navel Orange Regulation 620.

The quantities of navel oranges grown in California and Arizona which may be handled during the period January 3, 1986, through January 9, 1986, are established as follows:

(a) District 1: 1,200,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: December 31, 1985.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–193 Filed 1–2–86, 9:44 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–25]

Revised Description to the San Luis Obispo, CA, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This alteration of the existing San Luis Obispo, California, Control Zone and Transition Area description is necessary to correct the airport reference point and provide for the upcoming name change to the San Luis Obispo Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC). Geographical coordinates are used in this description to provide a reference point that is permanent in nature. This action does not change the actual airspace, but only provides editorial changes.

EFFECTIVE DATE: 0901 G.M.T. January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1649.

SUPPLEMENTARY INFORMATION:

History

The San Luis Obispo County Airport, San Luis Obispo, California, airport reference point was incorrectly depicted in the description. The transition area referenced San Luis Obispo VORTAC which will have a name change in the near future. As a result of this upcoming name change, and correction to the airport reference point, an editorial change to the description of the control zone and transition area becomes necessary. To preclude numerous

editorial changes to control zone and transition area description, it has been determined that the use of geographical coordinates as reference points is more permanent and are not as subject to change as names or locations of navigational aids. Section 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the description of San Luis Obispo, California, Control Zone and Transition Area using geographical coordinates and deleting the use of San Luis Obispo VORTAC. This action also corrects the airport reference point used previously. Because this action does not change the actual airspace of the existing control zone and transition area and is, therefore, a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant, preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone/transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration, Part 71 of the FAR is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

San Luis Obispo, CA—[Revised]

Within a 5-mile radius of the San Luis Obispo County Airport (lat. 35°14'14" N., long. 120°38'29" W.) and within 2 miles each side of the San Luis Obispo County localizer course extending from the 5-mile radius zone to the outer marker. This control zone is effective from 0500 to 2330 hours, local time, daily or during the specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the *Airport/Facility Directory.*

3. Section 71.181 is amended as follows:

San Luis Obispo, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 35°14'30" N., long. 120°35'25" W.; to lat. 35°09'00" N., long. 120°36'30" W.; to lat. 35°09'30" N., long. 120°41'45" W.; to lat. 35°13'00" N., long. 120°41'50" W.; to lat. 35°14'40" N., long. 120°54'30" W.; to lat. 35°18'20" N., long. 120°40'40" W.; to lat. 35°16'30" N., long. 120°40'40" W.; thence clockwise via the 3-mile radius of San Luis Obispo County Airport (lat. 35°14'14" N., long. 120°38'29" W.); to the point of beginning.

Issued in Los Angeles, California, on November 1, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 86-6 Filed 1-2-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-8]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends and establishes several Federal Airways in south Georgia and north Florida to enhance the flow of air traffic in this area.

EFFECTIVE DATE: 0901 UTC March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On July 1, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airways V-5, V-51, V-154 V-295, V-321, V-362, V-537 and V-579 and establish new V-578 (50 FR 27013). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. V-295 and V-321 are not being amended as originally proposed due to the intensity of aerial acrobatic maneuvers in those areas where the airway extensions were proposed. Except for editorial changes and the withdrawal of the above proposed extensions, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends VOR Federal Airways V-5, V-51, V-154, V-362, V-537 and V-579 and establishes V-578.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (50 FR 11845 and 11846), is further amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-5 [Amended]

By removing the words "From Dublin, GA, via Athens, GA" and substituting the words "From Wiregrass, AL; Albany, GA; Vienna, GA; Dublin, GA; Athens, GA"

V-51 [Amended]

By removing the words "INT Alma 342° and Dublin, GA, 167° radials,"

V-154 [Amended]

By removing the words "INT of Dublin 122° and Savannah, GA, 279° radials; to Savannah." and substituting the words "to Savannah, GA."

V-362 [Amended]

By removing the words "From Alma, GA, via INT Alma 311° and Vienna, GA, 123° radials; Vienna" and by substituting the words "From Brunswick, GA; via Alma, GA; Vienna, GA"

V-537 [Amended]

By removing the words "to Greenville, FL" and substituting the words "Greenville, FL; Moultrie, GA; to Macon, GA"

V-579 [Amended]

By removing the words "to Cross City, FL" and substituting the words "Cross City, FL; Valdosta, GA; Tift Myers, GA; to Vienna, GA"

V-578 [New]

From Albany, GA, via Tift Myers, GA; to Alma, GA.

Issued in Washington, DC, on December 24, 1985.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-8 Filed 1-2-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 85-ANM-30]

Alteration of Restricted Area R-6407, Dugway, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name and using agency for Restricted Area R-6407 in the State of Utah. This action is required since the Commander, Dugway Proving Ground, UT, has transferred its functions to the Commander, 6501st Range Squadron, Hill AFB, UT.

DATE: Effective date—0901 UTC, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-3128.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to designate the Commander, 6501st Range Squadron, Hill AFB, UT, as the using agency for R-6407. The name of R-6407 will be changed to Hill AFB, UT. The change in name and using agency does not alter the type of activities conducted in the restricted area. Since this amendment is editorial in nature, it is a minor matter in which the public would have no particular desire to comment; therefore, I find that notice and public procedure thereon under 5 U.S.C. 553(b) is unnecessary. Section 73.64 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.64 [Amended]

2. § 73.64 is amended as follows:

R-6407 Dugway Proving Ground, Dugway, UT [Amended]

By removing the words "Dugway Proving Ground, Dugway, UT" and by substituting the words "Hill AFB, UT." Also, by removing the words "Commanding Officer, Dugway Proving Ground" and by substituting the words "Commander, 6501st Range Squadron, Hill AFB, UT."

Issued in Washington, DC, on December 26, 1985.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-7 Filed 1-2-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-244 (West Virginia-2 Addition); Order No. 441]

High-Cost Gas Produced From Tight Formations, West Virginia

Issued December 12, 1985.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1984)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This order adopts the recommendation of the Department of Mines, Oil and Gas Division, or the State of West Virginia, that additional areas of the "Big Lime" of the Greenbrier Group be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective January 13, 1986.

FOR FURTHER INFORMATION CONTACT: Kraig H. Koach (202) 357-9118.

SUPPLEMENTARY INFORMATION:

Issued December 12, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Charles G.

Stalon, Charles A. Trabandt and C. M. Naeve.

Based on a recommendation made by the Department of Mines, Oil and Gas Division, of the State of West Virginia, the Commission amends § 271.703(d) of its regulations to include additional areas of the "Big Lime" of the Greenbrier Group located in portions of Boone, Cabell, Kanawha, Lincoln, Logan, Mingo, Putman and Wayne Counties, West Virginia, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on March 11, 1985.[1]

Discussion

Analysis of data derived from seven hundred well samples reveals that the average gas permeability for those wells not excluded from the recommended area are expected to have a permeability value less than the maximum of 0.1 millidarcy allowed under the regulations; that the average natural open flow rate from the producing wells is considerably less than the maximum allowable rate for the appropriate depth; and no well within the recommended area is expected to naturally produce more than five barrels of oil per day. Accordingly, the West Virginia recommendation for the additional areas of the "Big Lime" Greenbrier Group, meets the Commission guidelines set forth in § 271.703(c)(2)(i).[2]

The Commission Orders: The Commission adopts the recommendation of the State of West Virginia that the additional area of the "Big Lime" of the Greenbrier Group be designated a tight formation under § 271.703(d).

This amendment shall become effective January 13, 1986.

List of Subjects in 18 CFR Part 271

Natural Gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations,* is amended as set forth below.

[1] 50 FR 10,505 (March 15, 1985). No comments were filed and no public hearing was held.

[2] 18 CFR 271.703(c)(2)(i) (1985). The Commission may approve a recommendation that a natural gas formation be designated a tight formation if each of the enumerated guidelines contained in this section is met.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(162) to read to follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(162) *"Big Lime" Zone of the Greenbrier Group in West Virginia.* RM 79–76–244 (West Virginia–2 Addition).

(i) *Delineation of formation.* The "Big Lime" Zone of the Greenbrier Group is defined as the stratigraphic interval overlying the "Keener" and "Big Injun" Zones of the Pocono Group and underlying the "Blue Monday" and "Little Lime" Zones of the Mauch Chunk Group. The "Big Lime" Zone is found in portions of Fayette, McDowell, Raleigh, Wyoming, Boone, Cabell, Kanawha, Lincoln, Logan, Mingo, Putman, and Wayne Counties and all of Mercer County.

(ii) *Depth.* The depth to the top of the "Big Lime" Zone ranges from approximately 1,375 feet in the northwest portion to 3,100 feet along the eastern edge and ranges in thickness from approximately 150 feet in the west to a maximum thickness of approximately 1,800 feet in the southeastern portion of the designated area.

[FR Doc. 86–39 Filed 1–2–86; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–2948–4; MS–008]

Approval and Promulgation of Implementation Plan; Mississippi: Revised Air Quality Regulations and Permit Regulations for the Construction and/or Operation of Air Emission Equipment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On May 9, 1984, the State of Mississippi adopted revisions to its State Implementation Plan's air pollution control regulations. These revisions specify that stack emissions testing for demonstration of compliance with regulations shall be performed in accordance with the Reference Methods of the U.S. Environmental Protection Agency (EPA) unless otherwise approved by the Mississippi Bureau of Pollution Control and EPA, and that stack analyses will be performed in accordance with the EPA Reference Methods. These revisions were submitted to EPA for approval on May 11, 1984. EPA has reviewed this submittal and found that it satisfies the requirements of 40 CFR Part 60, Appendix A, and is therefore approving it.

EFFECTIVE DATE: This action will be effective on March 4, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the materials submitted by Mississippi may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Management Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Office of Federal Register, 1100 L Street NW., Room 8401, Washington, DC 20005

Mississippi Department of Natural Resources, Bureau of Pollution Control, P.O. Box 827, Jackson, Mississippi 39205.

FOR FURTHER INFORMATION CONTACT: Al Yeast of EPA, Region IV's Air Management Branch, at the above listed address and phone 404/881–2864 (FTS: 257–2864).

SUPPLEMENTARY INFORMATION: On May 9, 1984, the State of Mississippi adopted a revision to their State Implementation Plan by amending their "Air Quality Regulations," (Section 1, Paragraph 3), to adopt stack emission testing for demonstration of compliance with the regulations to be performed in accordance with the Reference Methods of the U.S. Environmental Protection Agency in place at the time testing is performed. On this same date, Mississippi also adopted a revision to amend their "Permit Regulations for the Construction and/or Operation of Air Emission Equipment," (Paragraph 2.6.2.1), to require stack analysis in accordance with EPA Reference Methods.

EPA notes that while a State could adopt its own stack emission testing methods if it desires, the State of Mississippi has elected to incorporate and use EPA's stack emission test reference methods.

Final Action. EPA has reviewed the submitted material and found it to meet the provisions of 40 CFR Part 51. Therefore, EPA is today approving the State's submittal as satisfying the requirements of an acceptable plan.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this notice unless, with in 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 4, 1986.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Mississippi was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart Z—Mississippi

2. Section 52.1270 is amended by adding paragraph (c)(16) as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified. * * *

(16) Revision to "Air Quality Regulations" and amendment to "Permit Regulations for the Construction and/or Operation of Air Emission Equipment" were submitted by the Mississippi Department of Natural Resources on May 11, 1984.

(i) *Incorporation by reference.* (A) May 11, 1984 letter from the Mississippi Department of Natural Resources to EPA amending Regulations APC–S–1 and APC–S–2.

(B) A revision adopted on May 9, 1984, adds Paragraph 3 to Mississippi's "Air Quality Regulations," APC–S–1, Section 1 "General."

(C) A revision adopted on May 9, 1984, amends Mississippi's "Permit Regulations for the Construction and/or Operation of Air Emission Equipment," APC–S–2, Paragraph 2.6.2.1.

(ii) Other materials—none.

[FR Doc. 86–41 Filed 1–2–86; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

[FPMR Amdt. H–157]

Implementation of Executive Order 12512

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending portions of its regulations regarding the identification of unneeded Federal real property in order to implement section 2 of Executive Order 12512 of April 29, 1985, 50 FR 18453.

EFFECTIVE DATE: January 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. B. Michael O'Hara, Office of Real Property (202–535–7074).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society for this rule outweigh the potential costs, and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus Government property, and Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for Part 101–47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, (40 U.S.C. 486(c)).

2. The table of contents for Part 101–47 is amended by revising one entry as follows:

Subpart 101–47.8—Identification of Unneeded Federal Real Property

3. Section 101–47.800 is revised to read as follows:

§ 101–47.800 Scope of subpart.

This subpart is designed to implement, in part, section 2 of Executive Order 12512, which provides, in part, that the Administrator of General Services shall provide Governmentwide policy, oversight and guidance for Federal real property management. The Administrator of General Services shall issue standards, procedures, and guidelines for the conduct of surveys of real property holdings of Executive agencies on a continuing basis to identify properties which are not utilized, are underutilized, or are not being put to their optimum use; and make reports describing any property or portion thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator, is not utilized, is underutilized, or is not being put to optimum use, and which he recommends should be reported as excess property. The provisions of this subpart are presently limited to fee-owned properties and supporting leaseholds and lesser interests located within the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. The scope of this subpart

may be enlarged at a later date to include real property in additional geographical areas and other interests in real property.

4. Section 101–47.802 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(5)(i), and (b)(5)(v) to read as follows:

§ 101–47.802 Procedures.

* * * * *

(b) *GSA Survey.* Pursuant to section 2 of Executive Order 12512, GSA will conduct, on a continuing basis, surveys of real property holdings of all Executive agencies to identify properties which, in the judgment of the Administrator of General Services, are not utilized, are underutilized, or are not being put to their optimum use.

(1) GSA surveys of the real property holdings of executive agencies will be conducted by officials of the GSA Central Office and/or regional offices of GSA for the property within the geographical area of each region.

* * * * *

(5) * * *

(i) The GSA representative will so inform the executive agency designated pursuant to 101–47.802(b)(1). To avoid any possibility of misunderstanding or premature publicity, conclusions and recommendations will not be discussed with this official. However, survey teams should discuss the facts they have obtained with local officials at the end of the survey to ensure that all information necessary to conduct a complete survey is obtained. The GSA representative will evaluate and incorporate the results of the field work into a survey report and forward the survey report to the GSA Central Office.

* * * * *

(v) If the case is not resolved, the GSA Central Office will request assistance of the Executive Office of the President to obtain resolution.

Subpart 101–47.49—Illustrations

5. Section 101–47.4914 is recaptioned and revised to read as follows:

§ 101–47.4914 Executive Order 12512.

Note.—The illustrations in § 101–47.4914 are filed as part of the original document.

Dated: November 27, 1985.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86–82 Filed 1–2–86; 8:45 am]

BILLING CODE 6820–96–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

Organization, Functions and Delegations of Authority

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This document contains changes to the FEMA organization statements. FEMA has had some recent internal organizational changes which are reflected in this document.

EFFECTIVE DATE: January 3, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, (202 646–4096)

SUPPLEMENTARY INFORMATION: As this document relates to agency management it is not subject to the requirements for notice and public comment and may be made effective immediately.

List of Subjects in 44 CFR Part 2

Organization and Functions.

PART 2—[AMENDED]

Accordingly, Chapter I, Subchapter A of Title 44 is amended as follows:

1. The authority for Part 2 continues to read as follows:

Authority: 5 U.S.C. 552; sec. 106, Reorganization Plan No. 3 of 1978; Executive Order 12127 of March 31, 1979; Executive Order 12148 of July 20, 1979, as amended.

1A. Section 2.2 is amended by revising it to read as follows:

§ 2.2 Organization of FEMA

(a) The Director is the head of FEMA. All authorities of FEMA are either vested in the Director or have been transferred to or delegated to the Director. Notwithstanding any delegation by the Director to a subordinate officer of FEMA, the Director may exercise such authority.

(b) FEMA is composed of the Administrators, Directorates and offices, the responsibilities of which are described in § 2.10 *et seq.*

§ 2.12 [Amended]

2. Section 2.12 is amended by removing from the last sentence "and Deputy Director."

§ 2.22 [Amended]

3. Section 2.22(a)(6) is amended by removing "NDER."

§ 2.52 [Amended]

4. Section 2.52(a) is amended by removing "and the Deputy Director."

5. Section 2.52(b) introductory paragraph is amended by removing "and the Deputy Director."

6. Section 2.52(b)(7) is removed and reserved.

§ 2.54 [Amended]

7. Section 2.54(a) is amended by removing "and by the Deputy Director."

8. Section 2.60 is revised to read:

§ 2.60 Deputy Director.

(a) The Deputy Director shall perform such functions as the Director may prescribe and shall act as Director during the absence or disability of the Director, or in the event of a vacancy in the Office of the Director. The Deputy Director shall chair the Management Council.

(b) The Deputy Director is delegated the authority to manage the National Defense Executive Reserve Program under section 710(e) of the Defense Production Act (50 U.S.C. App. 2260(e), including authority under Executive Order 11179.

§ 2.63 [Amended]

9. Section 2.63(c)(4) is removed and reserved.

§ 2.73 [Amended]

10. Section 2.73 is amended by removing in the second sentence "NDER."

Dated: December 27, 1985.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86–63 Filed 1–2–86; 8:45 am]

BILLING CODE 6718–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 549 and 552

[APD 2800.12 CHGE 20]

Acquisition Regulation; Termination for Convenience of Government and Termination Liabilities

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 is amended to add Section 549.502, Termination for convenience of the Government; 552.249–70, Termination for convenience of the Government (Fixed-Price) (Short Form); 552.249–71, Termination for Convenience of the Government (Fixed-Price); and 552.249–72, Submission of Termination Liability Schedule. This change will incorporate the substance of

a class deviation to the FAR termination for convenience of the Government clauses at 52.249–1, 52.249–2, and 52.249–4 in order to modify and supplement the clauses when used in contracts for the acquisition and maintenance of telephone systems which are funded through the Federal Telecommunications (FT) Fund. The modification is necessary to make the FAR clauses compatible with a termination liability provision. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: November 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Hill, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4766.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1985, the General Services Administration published in the **Federal Register** (50 FR 35582) GSAR Notice No. 5–103 inviting comments from interested parties on these proposed changes to the regulation and provided a 30-day comment period. No comments were received from the public. Comments from various GSA offices have been reviewed, reconciled, and incorporated, when appropriate, in this final rule.

Impact

This is not a major rule as defined in Executive Order 12291. Therefore, preparation of a regulatory impact analysis was not necessary. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The changes will be consistent with the standard industry practice regarding the use of termination liability provisions. Therefore, no regulatory analysis has been prepared. The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 549 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 549 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 549 is amended by adding new Subpart 549.5 and sections 549.502 and 549.570 as set forth below:

PART 549—TERMINATION OF CONTRACTS

Sec.

* * * * *

Subpart 549.5—Contract Termination Clauses

549.502 Termination for convenience of the Government.

549.570 Submission of termination liability schedule.

3. Subpart 549.5 is added to read as follows:

Subpart 549.5—Contract Termination Clauses

549.502 Termination for convenience of the Government.

(a) The contracting officer shall insert the clause at GSAR 552.249–70, Termination for Convenience of the Government (Fixed-Price) (Short Form), in all solicitations and contracts for the acquisition and maintenance of telephone systems to be funded through the Federal Telecommunications Fund (FT) when the supply portion of the contract does not exceed $100,000. This clause should be used together with the FAR clauses at 52.249–1 and 52.249–4.

(b) The contracting officer shall insert the clause at GSAR 552.249–71, Termination for Convenience of the Government (Fixed Price), in all solicitations and contracts for the acquisition and maintenance of telephone systems to be funded through the Federal Telecommunications Fund (FT) when the supply portion of the contract exceeds $100,000. This clause should be used together with the FAR clauses at 52.249–2 and 542.249–4.

549.570 Submission of termination liability schedule.

The contracting officer shall insert the provision at GSAR 552.249–72, Submission of Termination Liability Schedule, in all solicitations for the acquisition and maintenance of telephone systems to be funded through the Federal Telecommunications Fund (FT). This provision is to be used when either the clause at GSAR 552.249–70 or the clause at GSAR 552.249–71 is used.

4. The table of contents for Part 552 is amended by adding new entries for §§ 552.249–70, 552.249–71, and 552.249–72 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

* * * * *

Subpart 552.2—Text of Provisions and Clauses

* * * * *

Sec.

552.249–70 Termination for Convenience of the Government (Fixed Price) (Short Form).

552.249–71 Termination for Convenience of the Government (Fixed Price).

552.249–72 Submission of Termination Liability Schedule.

* * * * *

5. Section 552.247–70 is amended to revise the introductory text to read as follows:

552.247–70 Placarding railcar shipments.

As prescribed in section 547.305–70, insert the following clause:

* * * * *

6. Sections 552.249–70, 552.249–71, and 552.249–72 are added to read as follows:

552.249–70 Termination for Convenience of the Government (Fixed Price) (Short Form)

As prescribed in section 549.502(a) insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (NOV 1985) (DEVIATION FAR 52.249–1)

(a) The Government may terminate this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. In the event of any such termination, the rights of the Government and the Contractor shall be determined as provided in paragraph (b) unless there is a termination liability schedule, in which case the rights of the parties shall be determined as provided in paragraph (c).

(b) The clause set forth in 52.249–1 of the FAR shall be applicable to the supply portion of the contract and the clause set forth in 52.249–4 of the FAR shall be applicable to the service portion of the contract.

(c) If the Contractor specifies a schedule of termination liability charges that would be incurred by the Government if the Government terminates this lease contract without taking title to the equipment, the payment of such charges shall be the only responsibility of the Government to compensate the Contractor for such termination; except that, in any event there shall be no termination liability for equipment which was not installed prior to the termination of this contract.

(End of Clause)

552.249-71 Termination for Convenience of the Government (Fixed-Price)

As prescribed in § 549.502(b), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (NOV 1985) (DEVIATION FAR 52.249-2)

(a) The Government may terminate this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. In the event of any such termination, the rights of the Government and the Contractor shall be determined as provided in paragraph (b) unless there is a termination liability schedule, in which case the rights of the parties shall be determined as provided in paragraph (c).

(b) The clause set forth in 52.249-2 of the FAR shall be applicable to the supply portion of the contract and the clause set forth in 52.249-4 of the FAR shall be applicable to the service portion of the contract.

(c) If the Contractor specifies a schedule of termination liability charges that would be incurred by the Government if the Government terminates this lease contract without taking title to the equipment, the payment of such charges shall be the only responsibility of the Government to compensate the contractor for such termination; except that, in any event there shall be no termination liability for equipment which was not installed prior to the termination of this contract.

(End of Clause)

552.249-72 Submission of Termination Liability Schedule.

As prescribed in section 549.570 insert the following provision:

SUBMISSION OF TERMINATION LIABILITY SCHEDULE (NOV 1985)

(a) An offeror may submit, as part of its proposal, a termination liability schedule to be applied in the event any resultant contract is terminated by the Government for reasons other than default. The offeror shall provide and explain the amount and method of computation of the termination liability charge(s).

(b) If submitted, the termination liability schedule will be made a part of any resultant contract and be incorporated into Part I, Section B of the contract document. In the event a termination liability schedule is not submitted and the Government terminates and resultant contract for its convenience, the rights of the parties shall be determined in accordance with paragraph (b) of the GSAR Termination for Convenience of the Government clause set forth in 552.249-70 or 552.249-71, whichever is applicable.

(c) Any termination liability charges existing at the end of the evaluated contract period will be considered in the evaluation of offers.

(End of Provision)

Dated: November 27, 1985.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86-81 Filed 1-2-86; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1152

[Ex Parte No. 274 (Sub-No. 8); Ex Parte No. 274 (Sub-No. 10)[1]]

Exemption of Out of Service Rail Lines and Environmental Notices in Abandonment and Rail Exemption Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission has (1) modified 49 CFR 1105.11 to require that notices of environmental and energy matters be served when filing notices of exemption under 49 CFR 1152.50; and (2) modified 49 CFR 1105.11 and 1152.50(d)(2) to require carriers to certify that a notice of environmental and energy matters has been served on the designated State agency or agencies. The modifications appear in the appendix.

EFFECTIVE DATE: These modifications are effective on February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect the quality of the human environment or energy conservation, nor will it have a significant economic impact on a substantial number of small entities, because it merely affects the service and filing of environmental notice.

List of Subjects

49 CFR Part 1105

Environmental impact statements; Reporting and recordkeeping requirements.

[1] Embraces Ex Parte No. 282 (Sub-No. 3), *Railroad Consolidated Procedures.*

49 CFR Part 1152

Administrative practice and procedure; Railroads; Reporting and recordkeeping requirements.

This notice is issued under the authority contained in 49 U.S.C. 10321, 10362, 10505, 10903-06; 45 U.S.C. 904 and 915; 42 U.S.C. 4332; 31 U.S.C. 9701; and 5 U.S.C. 553, 559, and 704.

Decided: December 19, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Taylor did not participate.

James H. Bayne,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended to read as follows:

PART 1105—[AMENDED]

§§ 1105.11 and 1105.17 [Amended]

(1) The authority citations appearing after §§ 1105.11 and 1105.12 are removed and the authority citation for Part 1105 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, and 10903-10906; 42 U.S.C. 4332; and 5 U.S.C. 553 and 559.

(2) Section 1105.11 is amended by revising the first paragraph as follows:

§ 1105.11 Environmental notice.

A carrier filing a notice of intent to abandon a line under 49 CFR 1152.20(d), a notice of exemption under 49 CFR 1152.50 or 1180.2(d)(5), or a petition for exemption pursuant to 49 U.S.C. 10505 [except when exemption is sought for an action normally not subject to environmental review under § 1105.6(c) of this part] shall serve upon the designated agency in each State a notice of environmental and energy matters, together with its notice or petition. The environmental notice must be in the form specified in the appendix to this section. When filing the notice or petition, a carrier must certify to the Commission that this environmental notice requirement has been satisfied.

* * * * *

PART 1152—[AMENDED]

(1) The authority citation for Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

(2) The second sentence of § 1152.50(d)(2) is revised as follows:

§ 1152.50 Exempt abandonments and discontinuances of service and trackage.

* * * * *

(d) * * *

(2) * * *

The notice shall include the proposed consummation date, the certification required in §§ 1152.50(b), the information required in § 1152.22(a) (1) through (4) and (8), and (e)(5), the level of labor protection, and a certificate that the notice requirements of § 1152.50(d)(1) and 49 CFR 1105.11 have been complied with.

* * * * *

[FR Doc. 86-3 Filed 1-2-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[51186-5186]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a rule to amend the marine mammal regulations pertaining to U.S. vessels using purse seine gear to fish for tuna associated with porpoise in the eastern tropical Pacific Ocean (ETP) with a certificate of inclusion under the General Permit of the American Tunaboat Association (ATA). Under this rule, several regulations concerning required fishing gear and fishing practices will be modified or deleted in recognition that they are excessively restrictive or have become unnecessary. The changes will complement the rules implementing the 1984 Marine Mammal Protection Act (MMPA) amendments, which extended the General Permit and porpoise mortality quotas and established mortality quotas for eastern spinner and coastal spotted dolphin. The amendments will provide flexibility for vessel operators purse seining for tuna in association with porpoise to use porpoise saving gear and techniques more efficiently while requiring them to continue to use the best marine mammal safety techniques that are economically and technologically practicable.

EFFECTIVE DATES: February 3, 1986.

ADDRESS: Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Services, 3300 Whitehaven Street, NW., Washington, DC 20235; or E. C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731. A Final Environmental Impact Statement is also available upon request.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead (Marine Resource Management Specialist, NMFS, Washington, D.C.) 202-634-7471; or Svein Fougner (Chief, Fisheries Management and Analysis Branch, Southwest Region, NMFS, Terminal Island, CA) 213-548-2518.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1984, the NMFS published a notice of intent to prepare an Environmental Impact Statement (EIS) and hold scoping meetings to develop a regulatory regime for the porpoise-associated tuna fishery beginning in 1986 (49 FR 1778). Scoping materials were distributed and scoping meetings were held in February 1984 in San Diego, California, and Washington, DC. The NMFS indicated that the EIS and regulatory process would include a review of the status of porpoise stocks; and evaluation of the effectiveness of current regulations; and an assessment of the economic conditions in the U.S. tuna industry to determine the economic and technological feasibility of different regulatory measures. The new regulations would succeed the regulations which were effective January 1, 1981, and scheduled to expire December 31, 1985.

In 1984, the Congress passed and the President signed into law an act (Pub. L. 98-364) reauthorizing and amending the MMPA. The amendments—

1. Extend indefinitely, beginning January 1, 1986, the ATA General Permit and existing porpoise quotas and establish quotas for eastern spinner and coastal spotted dolphin, but maintain the requirement that U.S. vessels continue to use the best marine mammal safety techniques and equipment that are economically and technologically practicable;

2. Establish that the Secretary of Commerce (Secretary) require that the government of any nation wishing to export to the United States yellowfin tuna taken with purse seines in the ETP, or products from such tuna, must provide documentary evidence that the government of the harvesting nation has a regulatory program governing the incidental taking of marine mammals that is comparable to the program of the United States, and that the average rate of incidental taking by the vessels of the harvesting nation is comparable to the average rate of taking of marine mammals by vessels of the United States; and

3. Require the Secretary to conduct a scientific research program to monitor for at least five consecutive years, and periodically thereafter, indices of abundance and trends of marine mammal population stocks. If it is found that the take under these amendments is having a significant adverse effect on a population stock, the Secretary shall amend the quotas or the requirements for gear and fishing practices to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

The effect of these MMPA amendments was to narrow the scope of the rulemaking as originally announced January 13, 1984. Only the fishing gear and procedural regulations are being amended in this rulemaking.

Comments and Responses

Proposed rules were published on May 2, 1985 (50 FR 18713) along with a draft EIS for public review and comment. The NMFS received ten (10) letters or sets of comments on the draft EIS and proposed rules. Of these, five sets of comments were from or on behalf of national and local environmental organizations, three were from U.S. government agencies and two were from individuals. A summary of the comments received and NMFS' responses to those comments are as follows:

Comment: Several commenters emphasized that the 1984 MMPA amendments require the tuna industry to continue using the best marine mammal safety techniques that are economically and technologically practicable.

Response: The NMFS concurs, and this point has been emphasized in the final rule and final EIS.

Comment: Two commenters indicated that the DEIS presented an overly optimistic assessment of the status of porpoise population stocks and that there should be more discussion of the data, analyses, and assumptions made in reaching the conclusion that certain stocks are increasing.

Response: The NMFS acknowledges that, as pointed out by the House Report on the 1984 MMPA amendment, the data base does not permit calculation of precise estimates of historic and current population stock sizes. The projection of the future status of stocks is not meant to present either an overly optimistic assessment or a more certain assessment than is possible with available data. The NMFS agrees that

the lack of complete, precise data was a principal factor in Congress' decision to mandate a five-consecutive-year research program to select, assess, and monitor indices of abundance and trends of the affected population stocks. The Congress extended the General Permit and established quotas over interpretations of the data available. The EIS discussion of the status of stocks recognizes the data gaps and assumptions regarding estimates of current population stock conditions.

Comment: Several commenters said that the guidelines should be made available for public review before final regulatory decisions are made. One reviewer asked how the guidelines would be enforced.

Response: The NMFS intends to make the guidelines available for public review prior to implementation of these rules. The guidelines are not intended to carry the force of law; therefore, they will not be "enforced".

Comment: Four reviewers recommended that the marine mammal logbook requirement should be retained because logbooks can provide data needed for research or because they serve as a reminder to vessel operators of their responsibility to prevent porpoise mortality and injury.

Response: The data from the logbook are not usable to monitor trends in abundance or distribution of porpoise population stocks because they are not reliable, nor are they necessary for monitoring porpoise mortality because the observer program is sufficient. Continuing the logbook requirement therefore would not serve a useful purpose for research or monitoring mortality.

Comment: Seven reviewers commented on one or more aspects of the sundown set prohibition, including the question of the use of new lighting systems. The thrust of these comments was that the sundown set prohibition should be maintained and that suspension should be contingent on requiring installation of new lighting systems as "the best marine mammal safety techniques and equipment that are economically and technologically practicable." Two commenters urged complete prohibition of sundown sets.

Response: The NMFS has concluded that the sundown set prohibition will be deleted but that each vessel will be required to install the improved lighting systems by July 1, 1986. This is expected to reduce the mortality associated with sundown sets. The cost of such a lighting system is less than $1,000; this is far less than the estimated per vessel revenue loss that would occur if sundown sets were prohibited.

Comment: One reviewer recommended that the rubber raft, facemask and snorkel equipment requirements be retained.

Response: The final rule eliminates the specification of when and how these gear items are to be used but does not eliminate the requirement that a raft and underwater viewing equipment be on hand for use in spotting and releasing porpoise. It is unnecessary in NMFS' view to require that the raft be made of rubber, or to specify that a facemask and snorkel combination is the only acceptable equipment to search for submerged porpoise in a net. The NMFS has concluded that vessels operators and crew should be able to use a raft of any material or a viewbox in lieu of a mask and snorkel for the rescue purposes intended.

Comment: Two reviewers criticized the proposed system to allow waivers from the two speedboat limit for uncertificated vessels because there is no demonstrated need to use more than two speedboats when not fishing on porpoise.

Response: In NMFS' view, a formal waiver system is more likely to facilitate monitoring of the uncertificated fleet, especially if more vessels operate out of Panama or other foreign ports rather than U.S. ports. A requirement has been added to report exit from the permit area within ten (10) days of leaving a California port or fifteen (15) days of leaving a foreign port, and any days in excess of this transit time will be counted in calculating vessels "days at sea" for the purposes of estimating porpoise mortality from U.S. vessels' fishing activity. Similarly, vessels entering the permit area from the west, bound for a California or a foreign port, will have to report the date of their entry and the date of their arrival at port. Any days in excess of the 10- or 12-day limits noted above would count as "days at sea." This should minimize the risk that waivers will be used to try to circumvent the porpoise safety measures. Furthermore, the 1980 rulemaking focused on the use of speedboats in the ETP. The use of speedboats in the Western Pacific, for which the waiver system is being established, does not involve sets on marine mammals to our knowledge.

Comment: One reviewer recommended that the regulations retain the requirement that (1) sets should not be made in conditions that make porpoise saving techniques ineffective and (2) porpoise saving techniques should be continued, taking into account personnel safety, until all porpoise have been released from the net.

Response: This final rule emphasizes the general requirement that it is the vessel operator's responsibility "to take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals." Also, the regulations will prohibit brailing live porpoise and bringing live porpoise on board when retrieving the ortza. The guidelines are intended to help vessel operators and crew to fulfill this responsibility. In NMFS' view, these requirements and the guidelines will achieve the same results as intended by the reviewer's proposals. Therefore, the NMFS has chosen not to adopt the specific recommendation of the reviewer.

Final Rule

It must be emphasized that the basic elements of the marine mammal safety program are being maintained under this rulemaking. Limits on total mortailty and population stock mortality are the principal control, and the best marine mammal safety techniques that are economically and technologically practicable will continue to be required. Mortality rates per set and per ton of yellowfin tuna will be primary measures of the results of the program. Fishermen must continue to remove live porpoise from the net using the backdown procedure and will be prohibited from bringing live animals on deck. The regulatory amendments will provide additional flexibility to achieve maximum protection for porpoise. The NMFS will continue to place observers on a sample of U.S. vessels' trips to observe fishing practices and monitor mortality. A cooperative observer program will be carried out by the Inter-American Tropical Tuna Commission (IATTC). The Expert Shippers Panel is expected to continue its current program activities. The Panel meets with operators of vessels which have had sets with unusually high mortality levels to determine the possible cause of, and remedies to, conditions causing such problems. The results are disseminated to other skippers so such problems can be avoided in the future. The NMFS will continue to cooperate with the IATTC and Porpoise Rescue Foundation (PRF) to determine the effectiveness of alternative lighting systems in reducing mortality from sundown sets and to assess the need for subsequent amendments to gear or procedural regulations after two years of additional experience.

This final rule eliminates many of the procedural requirements of the current regulations. The NMFS will prepare and distribute to the industry and interested members of the public a set of guidelines

to substitute for the deleted procedural requirements. The guidelines will describe the types of procedures for porpoise rescue which have been most effective, including procedures to respond to different situations such as adverse wind and sea conditions. The guidelines will provide practical and useful information on porpoise rescue and will allow a vessel operator to use the combination of gear and techniques best suited to that vessel and ocean conditions to maximize porpoise release. Most, if not all, U.S. purse seine vessels already have and use the gear and procedures which will be required by these regulations, and the requirement to use the backdown procedure will be retained. Vessels not already so equipped will be required to install new high intensity floodlight systems to ensure their ability to carry out rescue procedures during sundown sets.

The final rule amends the current gear and procedural regulations to provide greater flexibility in the application of porpoise saving gear and techniques by operators and crews on U.S. vessels purse seining for tuna in association with porpoise in the ETP.

Most gear requirements are retained under these regulations. Those gear and procedural requirements that have been found to be unworkable, unnecessary, or too inflexible are being amended or deleted. The amendments will allow vessel operators to make on-the-spot adjustments in fishing practices to protect porpoise, with emphasis on the results rather than on procedural requirements. The level of porpoise mortality is limited by the quotas established by the 1984 amendments to the MMPA (see 49 FR 46908, November 29, 1984). The regulatory amendments are not expected to affect significantly the level of mortality from purse seining in the ETP. However, mortality from sundown sets is expected to be reduced due to the requirement to install new lighting systems. The specific amendments adopted are as follows (see Table 1 for a summary of the regulatory changes):

a. The two speedboat limit for uncertificated vessels is maintained, but a provision is introduced to limit its application to trips involving the General Permit area. A waiver system is established to allow vessel operators or owners to obtain a waiver from the prohibition in order to transit the area with more than two speedboats. A reporting requirement is added to monitor the movement of vessels with waivers through the permit area.

b. The requirement for tuna vessel operators to complete a daily marine mammal log is dropped because these data are not being used. Observer and research data will be sufficient for NMFS' purposes.

c. Technical modifications to the requirements for porpoise safety panels are adopted so that small mesh webbing will cover the same proportion of the perimeter of the backdown channel regardless of the depth of the net.

d. Vessel operators will have the option to use either a "super apron" or a fine mesh net to minimize porpoise mortality because both systems have been demonstrated to be effective. The skill of the skipper and crew in using porpoise safety gear and procedures is the critical element in preventing mortality.

e. Requirements for placing bunchlines at specific locations are deleted because the specification sometimes causes problems rather than prevents them.

f. Requirements for each vessel to have a rubber raft and at least two facemasks and snorkels are modified to allow non-rubber rafts and viewboxes because they are equally effective for the purpose of locating and rescuing porpoise in a purse seine.

g. The prohibition on sundown sets is deleted, but all certificated vessels will be required to install and use high-power lights in sundown sets to reduce mortality in such sets. A sundown set prohibition under current conditions would be economically impracticable and would impose very high costs on the U.S. tuna fleet. Preliminary data collected by NMFS and IATTC observers indicate that alternate lighting systems (1000-watt, hi-pressure sodium vapor lights with 140,000 lumen output) being tested by the IATTC and the PRF are effective in reducing rates of mortality in sundown sets. A requirement is added for all vessels to install such lights by July 1, 1986. The NMFS will evaluate the effectiveness of these lights after two years and will consider the need for new gear or procedural regulations, including the possible reimposition of the sundown set prohibition, at the time.

h. Several procedural requirements specifying how and where to use speedboats, hand rescue techniques, rubber rafts, and facemasks and snorkels are deleted. A set of guidelines will be issued to vessel operators and owners describing gear and techniques which have been most successful in different ocean and weather conditions. An opportunity will be provided for public review of an comment on the draft guidelines.

i. A prohibition on bringing live porpoise on board the vessel during retrieval of the bow ortza is added to the prohibition on brailing live animals to prevent mortality or injury from this practice. The ortza is a metal triangle at the end of the net, and on sets in which a small amount of tuna is caught, the ortza is sometimes brought onto a vessel with fish in the net. This practice will be prohibited if live porpoise are in the net.

j. Requirements pertaining to certificates of inclusion, notification of departure, inspections and trial sets, and use of lights will be retained but technical amendments will provide some flexibility to address special circumstances in their application.

TABLE 1.—SUMMARY OF REGULATORY CHANGES

Item	1981–85	New
Speedboat limitation	Uncertificated vessels carry more than two speedboats	Retain; provide for waiver transit through ETP, with radio report.
Logbooks	Operator must maintain daily marine mammal log	Delete.
Fine mesh net	Super apron installation required	Allow super apron or fine mesh net system.
Bunchline locations	Currently specified in regulations	Delete.
Rubber raft, facemask and snorkel	Specific gear requirements with use required	Allow alternate gear, e.g., nonrubber rafts and viewboxes; convert use requirement to guideline.
Sundown set prohibition	Presently permitted by nonenforcement of regulation	Delete; use requirement for new lights by July 1, 1986.
Use of speedboats	Requires where and when speedboats must be deployed and manned	Convert to guideline.
Hand rescue techniques	Specifies at least two crew must aid in porpoise release	Do.
Backdown	Presently required	Retain.
Lights	Specifies that spotlight and floodlights must be used when dark	Amend specification to specify features of light system to provide for full observation of porpoise release procedures and mortality.
Brailing	Prohibited to brail live porpoise on deck	Broaden explicit prohibition to prevent bringing live porpoise on deck when ortza is retrieved.

TABLE 1.—SUMMARY OF REGULATORY CHANGES—Continued

Item	1981-85	New
Modifications	Certain deadlines for surrendering Certificates of Inclusion, etc	Delete.
Inspections	Required under variety of circumstances	Require annually and after any net modification.
Safety panels	Specifies minimum length and location for installation	Clarify to use formula to require proportional coverage of net.

Required Statements

Section 103(d) of the MMPA requires that, concurrent with proposed regulations for taking, there be published (a) a statement of the existing levels of the species and population stocks of the marine mammals concerned; (b) a statement of the expected impact of the proposed regulations on the optimum sustainable population (OSP) of such species or population stocks; (c) a statement describing the evidence before the agency on which the proposed regulations are based; and (d) any studies made by or for the agency and any recommendations made by or for the agency or the Marine Mammal Commission which relate to the establishment of such regulations. The statements described in (a) and (b) above follow. The statements described in (c) and (d) are not included because they have not been modified since the proposed rule.

(a) *Estimated existing population levels.*

The NMFS rulemaking in 1980 included an estimate of existing population levels and replacement yields in 1979 and a projection of the status of those populations in 1985 relative to pre-exploitation stock size (i.e., estimated carrying capacity). The projection incorporated an assumption that actual mortality would equal the U.S. mortality quota levels set for 1981–85 plus an equal amount by non-U.S. vessels in the 1981–85 period.

In July 1984, a Federal appeals court held in *ATA* v. *Baldrige* (738 F.2d 1013) that the NMFS had erred in its determination of the status of populations. The NMFS has reviewed the estimates of status under the directive of the court for three principal target populations: coastal spotted, northern offshore spotted, and eastern spinner. Only these populations were reviewed; all other populations were concluded to be within their respective OSP ranges. Based on the numbers that NMFS was directed to use by the court in *ATA* v. *Baldrige*, all populations on Table 2 are within the OSP range in 1985. Table 2 presents the 1979 estimates for all populations and the adjusted estimates for these three stocks. Table 2 also presents projected 1990 status of populations incorporating actual 1979–84 mortality by species and assuming that annual U.S. 1985–90 mortality will be 20,500 animals in the same species proportion as 1979–84 mortality, with an equal level and distribution of mortality attributable to non-U.S. fishing on porpoise.

As is indicated in the preamble to this final rule and in the final EIS, the NMFS acknowledges that there is considerable uncertainty regarding the current status of marine mammal population stocks. There are differences of opinion about the validity of data and assumptions used in calculations of historic and present stock sizes. Given the paucity of mortality data for the period 1959–72, the variable estimates of net recruitment, and the technical problems inherent in estimating stock levels over a large area of ocean, the NMFS cannot estimate current and historic stock sizes with a high degree of precision. The extimates in Table 2 are based on the best available information.

TABLE 2.—ESTIMATED 1979 AND FUTURE POPULATION LEVELS

Species/stock management unit	Estimated 1979 population	1979 status[1]	Adjusted 1979 population[3]	Adjusted 1979 status[1]	Projected 1990 status[2]
Spotted dolphin:					
Northern offshore	3,150,000	.63	6,115,000	.85	.92
Southern offshore	638,700	.95			.93
Coastal	193,200	.42	414,600	.76	.89
Spinner dolphin:					
Eastern	418,700	.27	918,800	.55	.71
Northern whitebelly	486,600	.78			.83
Southern whitebelly	264,900	.90			.90
Common dolphin:					
Northern tropical	216,900	.97			.94
Central tropical	848,400	.89			.94
Southern tropical	477,100	1.00			.99
Striped dolphin:					
Northern tropical	50,600	1.00			.98
Central tropical	213,300	.99			1.00
Southern tropical	483,000	1.00			1.00

[1] Proportion of pre-exploited stock size.
[2] Projected from adjusted population for northern offshore spotted, coastal spotted, and eastern spinner dolphin and from estimated 1979 population for all other populations; includes assessment for equal levels of U.S. and non-U.S. porpoise mortality; incorporates actual 1980-84 mortality; assumes 1985-89 mortality will occur in same proportion as 1979-84 mortality by species, and that total mortality will equal quota level each year 1985-89.
[3] Adjusted in accordance with court directive only for northern offshore spotted, coastal spotted, and eastern spinner due to question about status of population; other populations were and continue to be healthy and adjustments were not of significance at this time.

(b) *Estimated impact on OSP.*

OSP of the species and stocks involved is defined as a population which falls in a range from the population level which is the largest supportable within the ecosystem, to the population that results in maximum net productivity (see 41 FR 55536, December 21, 1976). Maximum net productivity is the greatest net annual increment in the population due to reproduction and growth less losses due to natural mortality. Maximum net productivity is interpreted as being the lower limit of the range of OSP. The lower bound of OPS has been determined to be in the range of 50 percent to 70 percent of initial unexploited populations. If a population is below the mid-point of this range, i.e., 60 percent, it is considered to be depleted by NOAA.

The NMFS projects that every population will be within its OPS range in 1990 even if the estimated total annual mortality of each population occurs each year in the 1985–90 period. The NMFS expects that actual mortality

in that period will be less than the estimated levels (see Section V.B., Draft Environmental Impact Statement).

Hearing: In accordance with section 103(d) of the MMPA, the proposed rules published on May 2, 1985, provided an opportunity for an agency hearing. No request for a hearing was made.

Classification

The NMFS has determined that this action is a major Federal action under the National Environmental Policy Act of 1969 due to the overall public interest associated with the tuna fishery interaction with porpoise. A draft Environmental Impact Statement (EIS) was prepared and distributed for public review and comment. A final EIS has been prepared to document the decisions made as a result of the review comments received.

This rule is an administrative action which was developed on the record under the Administrative Procedure Act (5 U.S.C. 556 and 557) and, as such, is exempt from Executive Order 12291.

The rule eliminates a collection of information requirement that was previously authorized under the Paperwork Reduction Act (PRA). This rule also adds a new collection under the PRA. Any comments on these measures should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. Attention: Desk Officer for NOAA.

The General Counsel of the Department of Commerce certified to the Small Business Administration when the action was proposed, that it will not have a significant effect on a substantial number of small entities.

The Assistant Administrator has determined that this action does not directly affect the coastal zone of a State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: December 26, 1985.

Anthony J. Calio,

Administration, NOAA.

PART 216—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 216 is amended as follows:

1. The authority citation for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise stated.

2. In 216.24, paragraph (d)(2)(ii)(C) is removed and paragraph (D) is redesignated as (C); paragraph (d)(2)(iii)(C) is removed and paragraph (D) is redesignated as (C); paragraphs (d)(2)(iv) (C), (D), and (H), are removed and paragraphs (E), (F), (G), (I), (J), (K), (L), and (M) are redesignated as (C), (D), (E), (F), (G), (H), (I), and (J); paragraphs (d)(2)(vii) (A), (C), (E), (F), and (G) are removed and paragraphs (B), (D), and (H) are redesignated as (A), (B), and (C); paragraphs (a)(2), (d)(2)(ii)(A), (d)(2)(iv), introductory text, (d)(2)(iv) (A) and (B), newly redesignated paragraph (d)(2)(iv) (G), (H) and I, (d)(2)(v)(C), and newly redesignated paragraph (d)(2)(vii)(C) are revised; and new paragraphs (a)(3) and (d)(2)(vii)(D) are added to read as follows:

§ 216.24 Taking and related acts incidential to commercial fishing operations.

(a) * * *

(2) A vessel on a commercial fishing trip involving the utilization of purse seines to capture yellowfin tuna which is not operating under a category two general permit and certificates of inclusion, and which during any part of its fishing trip is in the Pacific Ocean area described in the General Permit for gear Category 2 operations, must not carry more than two speedboats.

(3) Upon written request in advance of entering the General Permit area, the limitation in (a)(2) may be waived by the Regional Director of the Southwest Region for the purpose of allowing transit through the General Permit area. The waiver will provide in writing the terms and conditions under which the vessel must operate, including a requirement to report by radio to the Regional Director the vessel's date of exit from or subsequent entry to the permit area, in order to transit the area with more than two speedboats.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(A) Marine mammals incidentally taken must be immediately returned to the environment where captured without further injury. The operators of purse seine vessels must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals must not be brailed or hoisted onto the deck during ortza retrieval.

* * * * *

(iv) A vessel having a vessel certificate issued under paragraph (c)(1) may not engage in fishing operations for which a general permit is required unless it is equipped with a porpoise safety panel in its purse seine, and has and uses the other required gear, equipment, and procedures.

(A) *Class I and II Vessels:* For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the porpoise safety panel must be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips must be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of the corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(B) *Class III Vessels:* For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and, if present, the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

* * * * *

(G) *Raft:* A raft suitable to be used as a porpoise observation-and-rescue platform shall be carried on all certificated vessels.

(H) *Facemask and snorkel, or viewbox:* At least two facemasks and snorkels, or viewboxes, must be carried on all certificated vessels.

(I) *Lights:* All certificated vessels shall be equipped by July 1, 1986, with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure sufficient light to observe that procedures for porpoise release are carried out and to monitor incidental porpoise mortality.

* * * * *

(v) * * *

(C) Upon failure to pass an inspection or reinspection, a vessel having a vessel certificate of inclusion issued under paragraph (c)(1) may not engage in fishing operations for which a general permit is required until the deficiencies in gear or equipment are corrected as required by an authorized National Marine Fisheries Service inspector.

* * * * *

(vii) * * *

(C) *Use of Lights:* If the backdown maneuver or other release procedures continue one-half hour after sunset, the required lights must be used to allow full observation of the set and of procedures for porpoise release and to monitor incidental mortality.

(D) *Porpoise Safety Panel:* During backdown, the porpoise safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. Any super apron must be positioned at the apex of the backdown channel.

* * * * *

§ 216.24 [Amended]

3. In addition to the amendments set forth above, remove the phrase "five (5) days" from paragraph (c)(1); and remove the phrase "at leat [sic] ten (10) days" from paragraph (d)(2)(iii)(A)(*1*).

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50 CFR Part 611

[Docket No. 50946-5212]

Foreign Fishing; Foreign Fee Schedule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA implements the 1986 foreign fishing fee schedule for foreign vessels fishing in the fishery conservation zone (FCZ). Under this fee schedule, foreign vessels will pay for 22.3 percent of the FY 1985 Magnuson Fishery Conservation and Management Act (Magnuson Act) costs. This rule is needed to comply with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act.

EFFECTIVE DATE: January 1, 1986.

ADDRESS: Copies of a regulatory impact review may be obtained from the Fees, Permits, and Regulations Division, F/M12 at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202-634-7432.

SUPPLEMENTARY INFORMATION: NOAA implements a schedule of fees for fishing during 1986 by foreign vessels in the fishery conservation zone (FCZ). The new schedule estimates fee collections of about $49.7 million, of which $49.5 million are to be collected in poundage fees.

Background

Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) states, in part, "The fees * * * shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act * * * during (FY 1985) the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during (1984) bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during (1984)." The fiscal and calendar years used in this fee schedule are shown above.

Foreign fee schedules are established under the Magnuson Act for each calendar year following provisions of § 204(b)(10). On October 11, 1985, NOAA published a proposed schedule of fees for foreign fishing in 1986 at 50 FR 41533 for public comments. Under this proposal, NOAA estimated the FY 1985 costs of carrying out the purposes of the Magnuson Act (referred to hereafter as Magnuson Act costs) as $222.832 million.

Foreign fishing fees in relation to total Magnuson Act costs are calculated from annual ratios of the catch taken by foreign vessels to the total catch during that year in the FCZ and territorial waters. In 1984 (which is the calendar year preceding FY 1985 as well as that for which NOAA has the most recent published statistics) foreign vessels harvested 22.3 percent of the total catch. This percentage was adopted in the proposal to calculate the total 1986 foreign fees. By applying this percentage to the total Magnuson Act costs, at least $49.7 million were proposed to be recovered from foreign fishing fees in 1986.

NOAA estimated that about $0.2 million would be recovered by 1986 permit application fees and therefore proposed that the balance of $49.5 million be recovered by the 1986 poundage fees. The proposed foreign permit application fees were based on estimated costs of processing 1986 applications. A fee of $167 was proposed for each vessel application in 1986.

The proposed amount to be collected from poundage fees was apportioned in relation to the estimated exvessel value and tonnage of each species harvested by foreign vessels. The 1986 foreign catch of each species was projected and values of the catch were summed to establish a total exvessel value for the foreign catch taken in the FCZ in 1986. The ratio of the $49.5 million to be recovered from poundage fees to the total exvessel value of the projected 1986 foreign catch determined the proposed fee rate, 35.37 percent of the exvessel value of each species.

The public comment period on this proposal closed on November 12, 1985. Comments received after that date but prior to clearance of the final rule by Assistant Administrator for Fisheries, NOAA, were also considered. NOAA responds to these comments and adopts the final rule to set 1986 foreign fishing fees. Readers should refer to 50 FR 41533 and the documents referenced therein for a detailed explanation of the proposed rule. No comments were received on proposed 1986 permit application fees and the 1986 surcharge for the Fishing Vessel and Gear Damage Compensation Fund. Therefore, these proposals are adopted as final.

Public Comments

Fourteen sources provided comments on the poundage fee provisions of the proposed rule and the draft regulatory impact review. Two comments were received after November 12, but are considered for this rule.

Public comments were received on behalf of: Lund's Fisheries Co., Joint Trawler's Ltd., Scan Ocean, Inc., Sea Ray Partners, and three Atlantic mackerel fishermen. Also commenting were the Governments of Japan and the German Democratic Republic and the Japan Fisheries Association (2) and representatives of the Republic of Korea. Two Regional Fishery Management

Councils, the North Pacific and the Pacific, also commented.

1. General Comments on the Foreign Fishing Fee Schedule

A number of general comments were received on the trends in U.S. foreign fishing fees. These comments addressed increases in fishing fees over the last few years and specifically effects of the large increase proposed in 1986.

a. *Comment:* U.S. foreign fishing fees are now 50 to 400 percent higher than fees imposed by other nations which maintain relatively high fishing fees. This is a poor example to other nations which look to the United States for leadership in equitable treatment. The fees appear to promote a protectionist policy.

Response: The Magnuson Act makes no provision for considering U.S. foreign fishing fees in relation to fishing fees assessed by other countries. It only provides that any schedule of fees shall apply nondiscriminatorily to each foreign nation. This the proposed schedule would do.

As currently worded, the fee provisions of the Magnuson Act are intended to recover a certain portion of the Federal Magnuson Act costs. These Federal expeditures provide the means by which not only U.S. fishermen but also foreign fishing companies benefit from Federal programs directed toward carrying out the purposes of the Magnuson Act. Since fees are assessed to recover costs rather than control the levels of foreign fishing in relation to domestic catch, there is no policy of "protectionism" intended or implied in the fee schedule. Therefore, NOAA finds that it may not reduce the fees because they are alleged to be the highest charged to fishing nations.

b. *Comment:* Setting high fees will reduce foreign fishing, in some cases wasting fish available for harvest, and subsequently result in fee collections which do not achieve the required revenues for the U.S. Treasury.

Response: Although fees have increased significantly since 1982, NOAA has not found evidence to suggest that these fee increases have caused allocations not to be fished at the usual rates of harvest. Nor has an allocation to a fishing nation which has traditionally fished in U.S. waters been turned back because the fees were too high.

NOAA considered in the RIR the possibility that allocations would not be harvested as a result of the 1986 fees and concluded that foreign companies can recover increased fees in their wholesale fish prices, and that fishing strategies will not be changed as a result of these fees. It concluded that the minimum costs will be recovered from foreign fishing. Although there were several comments on specific species fees (which are addressed later), no comments offered economic data to show that the overall level of fees would require any nation to cease fishing in the FCZ.

c. *Comment:* Several comments were to the effect that this fee schedule would adversely affect the assistance provided by foreign fishing nations to developing the U.S. fishing industry. The immediate result would be reductions in exports of U.S. shore produced products. The fee schedule was said to affect the will of foreign companies to undertake joint ventures with U.S. fishermen and the prices paid to U.S. joint venture fishermen. They claimed that the directed fisheries support the prices paid to U.S. fishermen.

Response: This comment is directed toward an extension of a "fish and chips" policy, with foreign companies seeking not only allocations in return for purchasing products from U.S. processors and for joint ventures, but also reduced fees. Section 201(e) of the Magnuson Act addresses recognition of a country's cooperation in trade of U.S. fish products. Reductions in any country's cooperation would result in corresponding allocation reductions for that country.

Joint ventures are currently transferring over 1,000,000 mt at-sea to foreign vessels for their markets. This increase has occurred while the total allowable level of foreign fishing has been reduced by over 600,000 mt. The magnitude of these figures leads NOAA to conclude that foreign markets—at least those markets for high volume fisheries such as pollock—depend on joint ventures as a significant component of their supplies. Recent amendments of the Magnuson Act have clearly promoted reductions of the fish available for direct foreign harvests in order to increase shore and at-sea purchases of U.S. fishing products. Moreover, NOAA believes that fish provided at-sea by U.S. fishermen are competitive with, and perhaps even less costly than, the fish harvested directly by foreign vessels.

d. *Comment:* Country costs for fishing are rising. One country estimates that the fees plus the observer surcharge for 100 percent coverage amount to about one-half the exvessel value of the fish. Additional overhead expenses are incurred for ensuring that a country's positions on various fisheries matters are considered by NOAA, DOS, and the Councils.

Response: NOAA understands that a fee assessment rate of about 35 percent of the exvessel value plus additional costs for observer coverage may require almost 50 percent of the exvessel value to be paid for fishing. However, certain other benefits are provided to foreign nations in what is now the U.S. economic zone. These benefits increase the value of fish transshipped directly from the fishing grounds to foreign markets. Value is added because U.S. management under the Magnuson Act provides opportunities for processing fish on grounds and transshipment from the grounds. Thus, the fees and associated costs make up a smaller part of the total value of the fishery products produced within the FCZ than it would appear if exvessel values are the only point of reference. Additional expenses for presenting a country's position are not an appropriate consideration in this fee setting process.

e. *Comment:* Increasing fee costs are causing replacement of fishery products in at least one country with other protein sources, such as chicken fed with U.S. imported grains.

Response: NOAA's intent is to maintain and improve opportunities for trade in U.S. fisheries products. But at the same time, it must ensure recovery of the appropriate Magnuson Act costs. There is no basis for reducing the fees assessed for the foreign catch to ensure that a foreign fishing product remains competitive with other protein sources, much less sources fed by grains imported from the United States. On the other hand, joint ventures are considered by NOAA to represent an inexpensive source of fishery products. One response to this comment is to suggest that supplies of joint venture products should be increased in relation to the fish taken by vessels of that country.

2. Method and Data used to Determine the Foreign Fee Share of FY 1985 Magnuson Act Costs

Significant public attention was given to the discussion contained in the proposed rule on the catch statistics used to determine the foreign fee share of the FY 1985 Magnuson Act costs. Some commenters allege that NOAA is in violation of the Magnuson Act because it does not employ statistics from the year preceding the fee schedule to determine the foreign fee share. They also cite the General Accounting Office's (GAO) statement on the statistics used in the fee schedule to support this allegation. Some commenters stated that surplus fee collections in excess of the amount

required by the Magnuson Act will greatly increase as foreign fishing is reduced at current ever increasing rates. Each point is addressed below.

a. *Comment:* NOAA is in violation of the Magnuson Act by using two year old statistics to determine the foreign fee share.

Response: NOAA is not in violation of the Magnuson Act by using two year old statistics. An explanation of NOAA's position on the appropriate statistics was provided to the GAO. A more detailed explanation was provided in the preamble to the 1985 fee schedule (item 1) published at 50 FR 460, on January 4, 1985.

A clear distinction must be made between the target set out in each fee schedule and the fee amount that NOAA believes to be required under Section 204(b)(10) of the Magnuson Act. The Magnuson Act specifies minimum fees to be collected; verification of NOAA's compliance with the Magnuson Act occurs when the fee collections for a year are compared with the minimum fees. This comparison cannot be made until the statistics required by Section 204(b)(10) are available, generally not until April of the fee year, and the fee collection is completed for the year of the schedule in the following year. Because foreign fishing is decreasing, this method provides a margin, or buffer, so that NOAA's fee collections do not fall below the amount required under the Magnuson Act.

Experience has shown that NOAA's annual fee collections generally do fall below the target specified in the fee schedule but exceed the minimum amount required by the Magnuson Act. This shortfall is due to uncertainties in TALFFs, the foreign fishing effort, and other factors which bear on NOAA's ability to accurately predict a level of fee collections at the time the fee schedule is prepared. Since the Magnuson Act requires that "at least" the amount of costs determined from the statistics for the prior year must be collected and fee collections exceed that amount, NOAA is in compliance with the "at least" provision of the Magnuson Act.

b. *Comments:* The GAO considered NOAA's method of calculating of the foreign share to be in violation of the Magnuson Act.

Response: NOAA's interpretation of the GAO comment on the method for calculating a foreign share of the total costs is that GAO was aware of NOAA's method and it noted the reason that NOAA adopted this method. In addition, GAO did not suggest that an alternative method, such as extrapolating catch statistics, be adopted as it had for considering appropriate Magnuson Act costs.

c. *Comments:* The method used by NOAA leads to an excessive surplus of fee collections.

Response: As stated in all fee schedules since 1983, NOAA does have authority to collect fees in excess of amounts proposed in the fee schedules, although no fee schedule has been adopted for the express reason of exceeding the target amount. Similarly, it has authority to collect fees in excess of the minimum amounts required by the Magnuson Act. Thus, there is no legal impediment to setting fees by using two year old statistics, when this method assures fee collections meeting the "at least" requirements of the Magnuson Act.

One way of viewing this issue is to compare hypothetical fees which would have been collected for the catch in a given year if the fee schedule target had been based on the statistics for the prior year's catches (assuming they were available at the time the fee schedules were developed.) Catches for the fishing year are assumed the same in the hypothetical case as the actual catches during that year. Because species fees are based on rates determined from the ratio of the fee schedule target to the total exvessel value of the foreign catch and no changes are made in the assumed exvessel values of the species harvested by foreign vessels, the annual collections would be reduced in the same proportion as the reductions in fee schedule targets. The following table shows results for the years for which data are complete for comparing the hypothetical fee collections with the Magnuson Act requirement. Projected 1985 and 1986 collections stated in some comments are not included in the table since even the 1985 fee year has not been concluded. (F/S should be read as fee schedule.)

[In millions of dollars]

Year	Actual F/S target	Fees collected	Magnuson Act requirement	Hypothetical F/S target	Hypothetical fees collected
1982	$34.7	$33.4	$34.2	$34.2	$32.9
1983	43.1	41.3	37.1	37.1	35.6
1984	44.6	42.9	40.5	40.5	39.2
		117.3	111.8		107.7

Using the above totals, NOAA collected at least the $111.8 million required by the Magnuson Act from 1982 through 1984, plus an amount of $5.5 million, or average 4.9 percent per year, over the minimum Magnuson Act requirement. However, had NOAA adopted, by some means, the system proposed by the commenters to establish the fee schedule, it would have experienced a $4.1 million, or 3.7 percent average annual, deficit in total fee collections over this three year period. Thus, NOAA believes it is justified in continuing to establish fees in the manner proposed in order to remain in full compliance with the minimum cost recovery prescribed in the Magnuson Act.

d. *Comment:* Severe decreases in TALFFs anticipated in the future will lead to large increases in fees which exceed the amounts required by the Magnuson Act.

Response: Large decreases in TALFFs could cause larger fee collections in excess of the minimum fees required by the Magnuson Act. Therefore NOAA reviewed the possible effects by estimating percentages of the foreign catch in 1985 and 1986 and using the actual percentages of the foreign catch in former years. It compared differences between the cost allocations in the fee schedule to foreign fishing by year. Based on current estimates of catch in 1986, there may be a large reduction in the foreign catch ratio compared to the ratio calculated with 1984 data. The greatest reduction experienced to date actually occurred in 1983 when the foreign catch dropped 6.9 percent below that in 1982. In 1983, the example shown in reply to comment 2.c. indicates that NOAA collected fees of $4.2 million in excess of the Magnuson Act requirement of $37.1 million and still fell short of the fee schedule target by $1.8 million. Had the species fees been scaled down to account for the (later determined) 1982 statistics, collections would have been $1.5 million *short* of the Magnuson Act requirement.

Given these circumstances and uncertainties in predicting future trends in the fisheries, NOAA believes its method of determining fees is fully justified.

e. *Comment:* One comment suggested that NOAA use statistics for the preceding fiscal year to determine the portion of the total Magnuson Act costs for that fiscal year to be recovered from foreign fishing fees.

Response: In addition to the points made above, NOAA's response, supported by the discussion below, is that the current procedure is still the best way to proceed.

Data are requested by the Fees, Permits, and Regulations Division each April to calculate the foreign fishing fee structure for the next calendar year. In April, the NMFS Office of Information and Management completes the compilation of the previous year's annual statistics for publication in "Fisheries of the U.S." In several cases, the domestic landings are estimated values for the fourth quarter of the preceding year to provide a preliminary number in time for publication of a proposed rule.

This comment suggests that foreign fees be calculated in November based on fiscal year data (i.e., data through September 30th of the year). It would be impossible to provide such an estimate since there is such a lag in domestic landings data compiled and sent to NMFS by individual States. By November, some States still have a lag of 6 months of data to be entered into their computer files. Thus, while foreign catch data may well be available to some users for the period October 1, 1984, to September 30, 1985, NMFS is unable to obtain even reasonable estimates from the States of comparable domestic landings data for this time period.

Conclusion: After reviewing all comments concerning the methods for determining the foreign fee share of total Magnuson Act costs, NOAA finds no convincing argument or alternative method which could ensure that the fees required to be collected by the Magnuson Act could be more closely estimated in the foreign fishing fee schedule and required collections achieved during the fee year.

3. Methods of Compiling Total Magnuson Act Costs

A number of comments concerned NOAA's and Coast Guard's methods to estimate fiscal year costs for carrying out the purposes of the Magnuson Act. NOAA's compilation of costs for carrying out the purposes of the Magnuson Act was said to extend beyond the requirements of its fee provisions. Some contended that none of the Coast Guard's overhead costs are necessary to carry out the "provisions" of the Magnuson Act. In addition they claimed that costs allocated to fisheries missions for aircraft and vessel operations were overstated. One commenter criticized NOAA costs because they were said to include costs incurred under other legislative authorities. This comment requested NOAA to restrict consideration to incremental costs only. NOAA advises readers to refer to its response to general comments on the costs of carrying out the purposes of the Magnuson Act contained at item 2 in the final rule for the 1985 poundage fee schedule (including all references), published at 50 FR 460, January 4, 1985.

In addition, comments directed toward confining cost considerations to incremental costs, removing Coast Guard's indirect support costs, the methods of allocating project costs to the Magnuson Act, increased costs in the face of budget reductions, and other general Magnuson Act cost criticisms must be considered in the light of the recent GAO audit of the process. The GAO audit of the methods employed by NOAA and the other agencies which incur Magnuson Act costs did not find the costs to be overstated. In fact, the GAO staff found that other and greater costs should be associated with the Magnuson Act, including Coast Guard indirect support costs, and suggested that NOAA consider its findings in future fee schedules. (This is in contrast to GAO's observation on the statistics used for the fee schedule which was not accompanied by a suggested method for addressing GAO's concern.) NOAA agrees with the GAO cost findings and has determined FY 1985 costs consistent with those findings. The GAO is the principal Federal agency for assisting the Congress in its oversight and review of a responsible Agency's compliance with fiscal or budget provisions of legislation. The following discussion of specific Magnuson Act costs is confined to those comments calling into question the consistency of cost determinations for 1986 with the recommenations of the GAO audit.

a. *Comment:* Coast Guard's indirect support costs related to the Magnuson Act should be separated out and identified. Indirect costs would exist even if Coast Guard had no Magnuson Act responsibilities.

Response: The Coast Guard assigns its indirect support costs based on a percentage of its fisheries enforcement costs. This is a reasonable accounting practice and similar to NOAA's methods for determining specific support costs. The multi-mission nature of Coast Guard platforms requires consideration of all support costs for the platforms; the allocation of those support costs to fisheries enforcement is based on the portion of the effort associated with fisheries enforcement. This is consistent with NOAA's view that separate accounting systems are not required to assign Magnuson Act costs.

b. *Comment:* Coast Guard costs allocated to fisheries missions for vessel and aircraft operations appear to be overstated. Equipment costs include specialized equipment and sophisticated capabilities not relevant to fisheries enforcement. Domestic vessel safety checks and general law enforcement should not be assigned to fisheries enforcement. The Coast Guard generally discourages access to records from which its costs are derived.

Response: The multi-mission nature of the Coast Guard and its corresponding capital structure is a fact which must be accepted by users of its services. By using multi-mission capable platforms, the Coast Guard is reducing the costs to its beneficiaries by allocating only a portion of its support costs to any single program area, like fisheries enforcement. The cost for the fishing industry would be excessively high if the Coast Guard used platforms dedicated only to fisheries enforcement, since all support costs for these platforms would then be totally allocated to fisheries. In addition, the multi-mission nature of Coast Guard platforms benefits the foreign and domestic fishing industries by providing capabilities in other areas, such as search and rescue and navigation.

Coast Guard cost estimates are developed through its accounting system which provides the best information currently available. Contrary to claims in the comments, Coast Guard estimating methods are available for review. In fact, these methods were reviewed by the Japan Fisheries Association in 1983, and reviewed and substantiated by the GAO in 1985.

c. *Comment:* The Coast Guard's use of hours for allocating all costs is inappropriate for determining the fishery share. Further, allocation of 90 percent of the fishery costs to the Magnuson Act is not documented and open to question. Costs of fishing enforcement in the territorial sea should not be included.

Response: Boardings for non-fisheries purposes are not automatically billed to the Magnuson Act. While any boarding of a fishing vessel may be considered a Magnuson Act boarding by the NMFS, this is not an assumption used by Coast Guard units in assigning resource hours to various missions. According to written guidance on tracking resource hours, only those hours dedicated to detecting violations of fisheries laws or treaties are assigned to fisheries missions. Boardings that are not performed for these reasons are not billed to the fisheries program.

Time spent on fisheries patrol is justifiably billed to the fisheries

program. The Magnuson Act specifically states *total* costs are to be recovered, not just costs for a specific boarding. Long transit times caused by the geographic dispersion of fishing fleets are an unavoidable element of fisheries enforcement.

The Coast Guard deducts 10% of total fisheries costs for non-Magnuson Act enforcement. The Coast Guard performs little fisheries enforcement in the territorial sea because this area is generally not subject to the jurisdiction of the Magnuson Act. While enforcement of other living resource laws is performed occasionally, the total of these activities does not exceed the 10% of fisheries costs that are deducted. No evidence has been presented to justify altering this practice.

d. *Comment:* Coast Guard costs attributable to COOP and MSA programs (see NPR) should be deducted from all overhead and direct costs for Magnuson Act enforcement.

Response: The Notice of Proposed Rule, 50 FR 41533, discussed the decisions to deduct costs for Cooperation with other Agencies (COOP) and Marine Science Activities (MSA) in 1985 in the categories of administration and support. It clearly stated that COOP and MSA costs in these categories were deducted "to facilitate publication of a timely fee schedule." The final rule for the 1985 fee schedule (50 FR 460) also said that adjustments in future years may be smaller. Thus, interested parties were advised of the Coast Guard's position.

Since costs of support facilities are not related to the performance of COOP or MSA by operational units, COOP and MSA costs are not deducted from FY 1985 administrative or support costs.

e. *Comment:* NOAA underestimates fees that should be collected. It should either include all costs for federally managed fisheries outside and inside three miles, or remove the territorial seas catch from the formula for determining the foreign share of total Magnuson Act costs. Ongoing studies indicate that total Federal and State costs may considerably exceed $222 million.

Response: NOAA considers both the domestic catch in the U.S. territorial sea and the internal marine waters domestic catch to be the domestic catch in the territorial waters. (This decision is the result of an earlier legal opinion.) The Magnuson Act requires consideration of the domestic catch in territorial waters in the formula to determine foreign fees. It is NOAA's opinion that the Congress used the term "territorial waters" in section 204(b)(10) to indicate its intent that all domestic marine catch be used in the Magnuson Act formula to apportion the foreign fee share of the total costs.

NOAA has interpreted its requirement to return to the United States a portion of the costs for carrying out purposes of the Magnuson Act to mean Federal costs, including appropriate costs associated with the Sea Grant program and Pub. L. 84–304 and Pub. L. 88–309 which fund certain State and university activities. Earlier bills considered prior to passage of Pub. L. 96–561 which amended section 204(b)(10) to read as currently worded considered specific Magnuson Act costs incurred by States, academic, and other bodies. The language of these bills was not incorporated into Pub. L. 96–561 and NOAA believes it is correct in confining Magnuson Act costs to costs to the Federal government.

f. *Comment:* One comment was based on a review of the submissions of all NMFS cost reporting units. It specifically addressed Magnuson Act costs estimated under three calendar year operating plans (CYOPs). In addition it questioned the percentages assigned as Magnuson Act costs for a number of reimbursable projects, add ons, new items, and total funding increases from FY 1984. A major point of the comment was that costs incurred in the territorial waters, or conducted under other Acts should be excluded.

Response: NOAA has reviewed the comments on NMFS costs and the economic review provided with those comments. A reading of the review indicates general recognition that most NMFS cost increases resulted from and were consistent with NOAA's agreement to consider the GAO's suggested changes.

The GAO has reviewed Magnuson Act costs of programs conducted under other legislative authorities and has not faulted this practice. NOAA does not agree that costs incurred for programs in the territorial waters must be excluded from consideration. Comments which would remove costs of habitat programs because they are conducted in territorial waters were addressed in a prior schedule (see 2.d at 50 FR 46, January 4, 1985). The NMFS habitat policy links its habitat responsibilities to its overall fishery management responsibilities. While, in some instances preservation of habitats may provide for the protection of species which are under the exclusive jurisdiction of the States, preservation of habitat is also for the benefit of species under Federal jusrisdiction. Where this situation occurs, Magnuson Act costs for habitat protection were adjusted to reflect a sharing of benefits.

Guidelines provided to NMFS field offices on apportioning costs of habitat programs, add ons, grants, reimbursables, and inter-NOAA transfers of funds were to apportion to the Magnuson Act those direct costs and related overhead costs which support a fishery management plan, and those costs for funding or partially funding State participation in the collection of data used by a Council to make fishery management decisions. This guidance was followed by NMFS field offices in compiling FY 1985 Magnuson Act costs, and is reflected in the cost summaries.

Fishery development is one purpose of the Magnuson Act. This purpose is stressed in the allocation of TALFFs to foreign nations when the DOS must consider a country's cooperation in developing the U.S. fisheries before making allocations. Thus, $300,000 of a total of $1,083,200 for fishery development has been shown as a Magnuson Act cost because it is related to developing the squid, butterfish and mackerel fisheries.

4. Selected species poundage fees

Comments on species fees were focussed on two issues. A number of comments concerned the species fee for Atlantic mackerel. Comments were to adopt the mackerel fee applied in 1984 or even 1985. The mackerel fishery was said to hold the most promise for developing a significant fishery on the East Coast and should receive special consideration in the fee process. The other comment was that exvessel values should be determined by the values to U.S. fishermen rather than in the foreign markets.

a. *Comment:* The fee for Atlantic mackerel should be reduced.

Response: NOAA has reviewed all the comments on the Atlantic mackerel fee. Any special consideration which would result in a fee reduction to promote the development of that fishery is not possible because of NOAA's decision not to use "management factors," as it had in the 1981–1984 fee schedules to vary the species fees. There is no evidence to show that such a factor applied to the mackerel fee would achieve the objective desired by the commenters.

However, NOAA has reviewed the information provided on the exvessel value of Atlantic mackerel and is convinced by the data provided that the exvessel value should be reduced. After considering prices quoted in markets in Alexandria, Egypt and quoted costs of shipping, agency fees, and processing together with joint venture prices adjusted for fees on the grounds, NOAA

is adopting an exvessel value for Atlantic mackerel of $139/mt rather than the $190/mt proposed.

b. *Comment:* NOAA should use exvessel values to U.S. fishermen to determine fees. Increased fees resulting from using U.S. exvessel values together with the revised ratio described in 3.e. (i.e., after removing U.S. territorial waters catch to determine the foreign fee share of the costs) would result in either increased revenues to the general treasury or the "Americanization" of the fisheries. These policy objectives could be achieved by using fees rather than the time consuming process of fishery management plan amendments.

Response: NOAA originally used published U.S. exvessel values to determine fees. The use of U.S. ex-vessel values was discontinued when NOAA concluded that very few of the TALFF species were fished by U.S. fishermen. With the growth in joint ventures and development of other U.S. fisheries, that situation no longer exists, and there is a greater range of U.S. prices available. In some cases, in fact, proposed exvessel values consider U.S. joint venture prices. NOAA believes, however, that joint ventures prices for many species are low by comparison to prices for those products when landed in foreign ports. For example, the proposed Alaska pollock exvessel value determined from foreign market data does not compare favorably to the price to U.S. fishermen unless the fees are added to the price paid for the joint venture fish. Thus, if the foreign fee share could not simultaneously be increased by removing the U.S. territorial catch in the Magnuson Act formula, the rate of fee assessment would drop to 34.6 percent from the proposed rate of 35.37 percent and the objectives of these comments would not be achieved. As noted by the commenter, the current wording of the Magnuson Act does not provide the flexibility to achieve the objectives. Moreover, NOAA believes that management of the total level of foreign fishing is best addressed in fishery management plans rather than by the fee schedule.

5. The Regulatory Impact Review (RIR)

Comment: One comment addressed the RIR and the clarity of the alternative selected to recover costs from fees.

Response: NOAA agrees that the RIR does not clearly state that the alternative formed by combining alternatives 3 and 4 was selected. The RIR has been revised to indicate that the combined alternative was selected.

Summary

The foregoing summarizes the relevant issues raised during public comment period and provides NOAA's responses to the issues. As in former years, NOAA has considered all comments, responded to them, and made the appropriate changes in the proposed rule prior to adopting a final rule. In summary, these changes have been made: the exvessel value for Atlantic mackerel is reduced from $190/mt to $139/mt. The final rate of assessment is then determined as it was in the proposed rule (which incorrectly listed a rate of 35.7 rather than 35.37 percent in one instance). The final 1986 rate of fee assessment is 35.6 percent of the exvessel value, and the final Atlantic mackerel fee is $50/mt. Final fees for all other species are determined based on this final assessment rate and the exvessel values as they were proposed. Those fees are listed in Table 1 of § 611.22(b) as amended by the regulatory text.

Classification

NOAA prepared a draft regulatory impact review (RIR) that discussed the economic consequences and impacts of the proposed fee schedule and its alternatives. Copies of the final RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the proposed schedule does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrates that the fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This certification was forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis was not prepared.

The proposed fee schedule had no direct impact on the fishery resources in the FCZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels; however the schedule meets the criterion that fees should minimize disruption of traditional fishing patterns because the 1986 fees are directly related to exvessel values. Since this fee schedule will not prevent the harvesting of the available total allowable level of foreign fishing (TALFF), and the environmental impact of harvesting the TALFF is described for each fishery management plan, no further environmental assessment is necessary.

The 30-day delay in implementation required by the Administrative Procedure act is waived so that the fee schedule can be in place on Janaury 1, 1986. If no schedule is in place, foreign fishing vessels will not be allowed to harvest fish, and the U.S. Treasury consequently will lose revenues. Furthermore, an interruption in fishing for foreign vessels already in the FCZ would be costly to the foreign fishing companies, since their vessels would be incurring fixed operating costs while sitting idle until 30-day period elapsed.

This final rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: December 30, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

PART 61—[AMENDED]

For the reasons above, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Sections 611.22 (a), (b), and (c) are revised to read as follows:

§ 611.22 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $167 per vessel, plus the surcharge, if required under paragraph (c) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees drawn on a U.S. bank, made out to "Department of Commerce, NOAA", must be sent to the Division Chief, Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Room 414, Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(b) *Poundage fees.*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (c) of this section.

TABLE 1. SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	220
2. Hake, red	131
3. Hake, silver	140
4. Herring, river	50
5. Mackerel Atlantic	50
6. Other finfish, Atlantic	95
7. Squid, *Illex*	139
8. Squid, *Loligo*	226
Atlantic and Gulf fisheries:	
9. Atlantic Shark	151
10. Shrimp, royal red	[1]
Alaska fisheries:	
11. Pollock Alaska	43
12. Cod, Pacific	102
13. Pacific ocean perch	142
14. Other rockfish (Alaska)	165
15. Mackerel, Atka	66
16. Squid, Pacific	80
17. Flatfish, Alaska	56
18. Sablefish, Gulf of Alaska	260
Bering Sea and Aleutian Islands	137
19. Other species	54
20. Snails	91
Pacific fisheries:	
21. Whiting, Pacific	43
22. Sablefish	205
23. Pacific ocean perch	196
24. Other rockfish	210
25. Flounders	216
26. Mackerel, jack	182
27. Other species	207
Western Pacific fisheries:	
28. Coral	[2] 18
29. Groundfish, Seamount	141
30. Dolphin fish	1,965
31. Wahoo	786
32. Sharks, Pacific	44
33. Striped marlin	660
34. Pacific billfish	707
35. Pacific swordfish	832

[1] Reserved.
[2] Dollars per kilogram.

* * * * *

(c) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application of poundage fees under paragraphs (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge for 1986 fees.

* * * * *

[FR Doc. 85-30232 Filed 12-30-85; 1:27 pm]

BILLING CODE 3510-22-M

50 CFR Part 650

[Docket No. 51222-5222]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Delay of effective date.

SUMMARY: NOAA issues an emergency rule delaying implementation of Amendment 1 to the Fishery Management Plan for Atlantic Sea Scallops (FMP), which sets a new weight standard, and extending the existing meats-per-pound standard. This action is intended to avert severe immediate economic hardship while processors revise, as necessary, their handling procedures.

DATE: Effective January 1, 1986, the effective date of the amendments to 50 CFR Part 650, published at 50 FR 46069 is delayed until April 1, 1986. The current provisions of the FMP will remain in effect until superseded.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, 617-281-3600.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The final rule implementing the FMP established a minimum size at harvest within a range from 40-25 meats per pound and a procedure to adjust the management standard (47 FR 35990, August 18, 1982). On September 25, 1985 (50 FR 38820), NOAA extended the 35-meats-per-pound standard for the Atlantic Sea Scallop fishery until December 31, 1985. At the time of that action it was expected that Amendment 1 to the FMP would replace that standard, effective January 1, 1986, or sooner, with a new 4-ounce standard. See 50 FR 46069, November 6, 1985. As a result of information of potential severe economic hardship to the processing industry and in consideration of the difficulties winter weather would pose for the harvesters in adapting to a new management standard at this time, NOAA hereby delays for a period of 90 days the implementation of Amendment 1 and extends the existing 35-meats-per-pound standard. The current provisions of the FMP will remain in effect until superseded by Amendment 1. This action is taken under the authority of section 305(e)(1) of the Magnuson Fishery Conservation and Management Act.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistant with the Magnuson Fishery Conservation and Management Act and other applicable laws.

The Assistant Administrator also finds that due to the potential for adverse economic impact, the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provision of section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(A)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

As provided by section 608 of the Regulatory Flexibility Act, this emergency rule is being promulgated in response to an emergency which makes preparation of an initial regulatory flexibility analysis impracticable.

(16 U.S.C. 1801 *et seq.*)

Dated: December 31, 1985.

William G. Gordon,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 85-30977 Filed 12-31-85; 4:26 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 2
Friday, January 3, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

Revised Rules for Collecting Cotton Research and Promotion Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would revise the Cotton Board's rules and regulations governing the collection of cotton research and promotion assessments. The Cotton Board has determined that collection procedures need to be revised to reduce the risk of non-collection of assessments and permit the early detection of program violations. The proposed revisions would require all collecting handlers to submit a no cotton purchased handler report when appropriate and would also set forth specific measures to be taken if collecting handlers fail to comply with the regulations, including escrow accounts and interest charges on delinquent accounts. In addition, miscellaneous changes are proposed for clarity.

DATE: Comments must be received on or before February 3, 1986.

ADDRESS: Written comments may be sent to Naomi Hacker, Chief, Research and Promotion Staff, Cotton Division, AMS, USDA, Washington, DC 20250, (202) 447-2259.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Department Regulation 1512-1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. William T. Manley, Deputy Administrator, AMS, has certified that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The costs of compliance would not be significantly increased in that most of the proposed changes reflect practices that are presently available and used by the Cotton Board. In addition, while the proposed changes in the regulations would revise collection procedures, such changes would not affect the competitive position or market access of small entities in the cotton industry. The addition of interest charges would apply to only those entities that do not comply with current collection procedures and the addition of a "no cotton purchased" form is a self-certification form only. The proposed changes would be applied to all entities regardless of size.

The information collection provisions in this proposed rule have been given the OMB clearance number 0581-0115.

Background

The Cotton Research and Promotion Act (7 U.S.C. 2101 *et seq.*) provides for the collection of assessments on each bale of upland cotton marketed to support cotton research and promotion activities. The Cotton Research and Promotion Order (7 CFR 1205.301 *et seq.*), which implements the Act, was approved in a beltwide referendum of cotton producers. A 19-member Cotton Board appointed by the Secretary of Agriculture administers the program and collects the assessments. Collecting handlers, generally the first buyers of cotton from producers, are required to collect and remit the assessments to the Cotton Board. Producers who do not wish to participate in the research and promotion program may request a refund of any assessment paid.

The Cotton Research and Promotion Order authorizes the Cotton Board, subject to the Secretary of Agriculture's approval, to make rules and regulations to effectuate the terms and provisions of the Order, and to investigate and report to the Secretary violations of the Order (7 CFR 1205.327). The collection, remittance and reporting requirements are set forth in the Cotton Board Rules and Regulations (7 CFR 1205.500 *et seq.*).

The Cotton Board Rules and Regulations provide in § 1205.514 that each collecting handler shall transmit assessments to the Cotton Board as follows:

(a) Each calender month is a reporting period ending at the close of business on the last day of the month;

(b) Collecting handlers prepare a report for each reporting period that cotton is handled on which the handler is required to collect the assessments. These reports are to be mailed to the Cotton Board along with the collected assessments within 10 days after the close of the reporting period.

The Cotton Board collects the research and promotion assessments with the cooperation of collecting handlers and followup efforts by the Cotton Board staff as needed. The objective of this proposed action is to further strengthen the program's collection procedures. Collecting handlers would be more closely monitored to detect actual violations soon after they occur and help prevent potential violations. The proposed revisions would also enable the Cotton Board to more effectively deal with the small number of collecting handlers who are found to be in violation of the Act and Order. The collection procedures would be strengthened as follows.

First, the Cotton Board Rules and Regulations would be amended to require collecting handlers to submit a report to the Cotton Board for reporting periods when no cotton was handled on which assessments were due. This "no cotton purchased" report form would be provided to collecting handlers each month by the Cotton Board. To accommodate handlers who purchase cotton only during certain months, provision will be made for the filing of a final no cotton purchased report at the conclusion of his/her marketing season. The report would be in the form of a certification. It would contain a statement that the collecting handler did not and, for a final report, would not handle any cotton on which assessments were due during the month(s) covered by the report. The handler would be required to sign, date and return the form to the Cotton Board.

Handlers would be required to mail the report to the Cotton Board within 10 days after the close of the reporting period when no cotton was handled on which assessments were due. If a collecting handler handles cotton during any month following submission of the final report for his/her marketing season, such handlers shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The report would

be a monitoring tool which would allow the Cotton Board to detect violations earlier than under current procedures.

Further, the regulations would be revised by adding a new section 1205.515 to specify certain of the actions that would be available for use by the Cotton Board whenever a collecting handler failed to report and remit assessments that were collected as required by § 1205.514. The actions available to the Cotton Board would include: (a) audits of the collecting handler's books and records to determine assessments due the Cotton Board; (b) requiring the establishment of an escrow account for the deposit of assessments collected, with the frequency and schedule of withdrawals and deposits to be determined by the Cotton Board with the approval of the Secretary; and (c) referral of the matter to the Secretary for appropriate legal action against the collecting handler. The Cotton Board could employ these measures singly or in combination in light of the circumstances of the particular case.

In addition, a new paragraph (d) would be added to § 1205.514 to provide that if a collecting handler does not remit his assessments when due the assessments will be increased by an interest charge at rates prescribed by the Cotton Board with the approval of the Secretary. A 5 percent late charge would also be authorized if overdue assessments are not received prior to the subsequent report and assessment payment due from the handler. These proposed provisions are expected to provide further incentive to collecting handlers to pay their assessment obligations promptly.

These proposals are intended to reduce the risk of non-collection of research and promotion assessments, thereby enhancing the integrity of the program by helping to ensure that all funds collected are properly transmitted to the Cotton Board.

Revisions

In 7 CFR Part 1205, § 1205.514 would be revised and reorganized to include the no cotton purchased collecting handler report. The heading would be changed to "Reports and remittance to Cotton Board." The first sentence of the section would be amended because not all reports would transmit assessments. Paragraph (a) would remain unchanged. The introductory text of paragraph (b) would be shortened for clarity and the remainder of the paragraph would be divided into two subparagraphs.

Subparagraph (1) would described the collecting handler report and list the information needed in the report. Generally, the information is the same as that which is currently required except for the deletion of the reference to PIK cotton.

Section 1205.514(b) would be amended to clarify the requirement that collecting handler reports be mailed within 10 days after the close of the reporting period. The Cotton Board would use the postmarked date to determine whether a report was mailed on time.

Additionally, § 1205.514(b)(3) now requires the gin code number or, for PIK cotton, the county in which PIK cotton was earned. The provision regarding PIK cotton was promulgated on October 19, 1983 (48 FR 48541) and refers to cotton received by producers as payment-in-kind for acreage diversion. Since this program is no longer in effect, such a provision is obsolete and the revised § 1205.514 would require only the gin code number.

Subparagraph (2) would describe the newly proposed no cotton purchased handler report. The collecting handler or the handler's agent would be required to sign and date the report form.

Paragraph (c) of § 1205.514 would remain unchanged.

A new paragraph (d) would be added to § 1205.514 to provide that if a collecting handler does not remit assessments when due, interest will be charged on the overdue assessments at rates prescribed by the Cotton Board with the approval of the Secretary. In addition to the interest charge, if assessments are not remitted within 10 days after the end of the next reporting period, there shall be a late payment charge of 5 percent of the value of the overdue assessments.

The present § 1205.515, covering receipts for payments of assessments, would be redesignated § 1205.516, with paragraph (b) amended to remove as obsolete and unnecessary the reference to the county in which PIK cotton was earned.

Similarly, paragraph (n) of § 1205.500, defining the term "PIK cotton", would be removed because it is obsolete.

A new § 1205.515 would be added to set forth the actions that could be taken by the Cotton Board against collecting handlers who fail to comply with the requirements of § 1205.514.

Additionally, the procedure cotton producers must follow to obtain refunds of assessments in § 1205.520 would be amended to clarify the requirement that producers mail refund applications within 90 days from the date assessments were collected. Paragraph (b) would be changed to require that mailed refund applications be postmarked within 90 days from the date assessments were paid. The Cotton Board would use the postmark date to determine whether a refund application was mailed on time. List of Subjects in 7 CFR Part 1205—Cotton, Administrative practice and procedure, Research and promotion, Cotton Board, Producer assessments, Producer refunds, Reporting and recordkeeping requirements.

PART 1205—[AMENDED]

Accordingly, it is proposed to amend Part 1205 of Chapter II, Title 7 of the Code of Federal Regulations of Part 1205 as shown. The Table of Contents would be amended accordingly.

1. The authority citation for Subpart—Cotton Board Rules and Regulations of Part 1205 is revised to read as follows:

Authority: Sec. 15, 80 Stat. 285; 7 U.S.C. 2114.

§ 1205.500 [Amended]

2. Section 1205.500 would be amended by removing paragraph (n).

3. Section 1205.114 would be amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 1205.514 Reports and Remittance to Cotton Board.

Each collecting handler shall transmit assessments and reports to the Cotton Board as follows:

(a) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end at the close of business on the last day of the month.

(b) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each report shall be mailed to the Cotton Board and postmarked within 10 days after the close of the reporting period.

(1) *Collecting handler report.* Each collecting handler shall prepare a separtate report form each reporting period for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board and shall contain the following information:

(i) Date of report.

(ii) Reporting period covered by report.

(iii) Gin code number.

(iv) Name and address and handler.

(v) Listing of all producers from whom the handler was required to collect the assessments, their addresses, total number of bales, and total assessments collected and remitted for each producer.

(vi) Date of last report remitting assessments to the Cotton Board.

(2) *No cotton purchased report.* Each collecting handler shall submit a no cotton purchased report form for each reporting period in which no cotton was handled for which the handler is required to collect assessments during the reporting period. A collecting handler who handles cotton only during certain months shall file a final no cotton purchased report at the conclusion of his/her marketing season. If a collecting handler handles cotton during any month following submission of the final report for his/her marketing season, such handler shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton ws handled. The no cotton purchased report shall be signed and dated by the handler or the handler's agent.

(c) * * *

(d) *Interest and late payment charges.*

(1) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler failing to remit assessments to the Cotton Board when due.

(2) In addition to the interest charge specified in paragraph (d)(1) above, there shall be a late payment charge on any handler whose remittance has not been received by the Cotton Board within 10 days after the close of the next reporting period. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

4. Section 1205.515 would be redesignated as § 1205.516. Paragraph (b) of newly designated § 1205.516 would be revised to read as follows:

§ 1205.516 Receipts for payment of assessments.

* * * * *

(b) Gin code number of gin at which cotton was ginned.

* * * * *

5. A new § 1205.515 would be added to read as follows:

§ 1205.515 Failure to report and remit.

Any collecting handler who fails to submit reports and remittances according to reporting periods and time schedules required in § 1205.514 shall be subject to appropriate action by the Cotton Board which may include one or more of the following actions:

(a) Audits of the collecting handler's books and records to determine the amount owned the Cotton Board.

(b) Require the establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Cotton Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

6. Paragraph (b) of § 1205.520 would be amended by revising it to read as follows:

§ 1205.520 Procedure for obtaining refund.

* * * * *

(b) *Submission of refund application to Cotton Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Cotton Board. The application shall be postmarked within 90 days from the date the assessments were paid on the cotton by such producer. The refund application shall show (1) producer's name and address; (2) collecting handler's name and address; (3) gin code number; (4) number of bales on which refund is requested; (5)(total amount to be refunded; (6) date or inclusive dates on which assessments were paid; and (7) the producer's signature or properly witnessed mark. Where more than one producer shared in the assessment payment on cotton, joint or separate refund application forms may be filed. In any such case the refund application shall show the names, addresses and proportionate shares of all such producers. The refund application form shall bear the signature or properly witnessed mark of each producer seeking a refund.

* * * * *

Dated: December 27, 1985.

Wiliam T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-43 Filed 1-2-86: 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Revisions to the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges

December 30, 1985.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend Part 11 of its regulations to revise the billing procedures for annual charges for administering Part I of the Federal Power Act and the methodology for assessing Federal land use charges. This Notice of Proposed Rulemaking would change the timing for licensees' submission of the data necessary for the computation of charges for administrative costs, as recommended by the Inspector General of the United States Department of Energy. Under the rule proposed in this Notice, hydropower licensees would be required to compute generation data on a fiscal year basis, instead of on a calendar-year basis, and to file these reports by November 1 instead of February 1.

This Notice also proposes to change the Commission's system for computing land use charges. The proposal suggests several alternatives for computing these charges, from the Commission's traditional method of multiplying a per-acre land value, determined by one of several possible indices, by a rate of return, to approaches which would assess land use charges as a percentage of gross income or as a flat rate per kilowatt hour.

DATE: Written comments on this proposed rule must be filed with the Commission by March 4, 1986.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Gary L. Nordan, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, (202) 357-5777.

Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing annual charges in two major ways. First, it proposes to require the submission of generation data by licensees on a fiscal-year basis instead of on a calendar-year basis for the purpose of assessing charges to compensate the Commission for the cost of administering Part I of the Federal Power Act ("Act"). By changing the coverage and timing of data collection, the Commission will eliminate a delay in collections to correct the undercollection of interest by the United States Treasury. This undercollection, identified by the Inspector General of the Department of Energy,[1] results from assessing charges

[1] Assessment of Charges Under the Hydroelectric Program, DOE Rept. No. 0219 (September 3, 1985).

on a calendar-year basis while computing administrative costs on a fiscal year basis.

The proposal also examines several methods of assessing charges for the use of United States land under section 10(e) of the Act, and, among other things, requests comments whether certain indices of land value, existing or being developed by other government agencies, could be used to approximate better the fair market value of a licensee's use of Federal land.

II. Statutory Background

The Commission is required by section 10(e) of the Act to collect annual charges for, among other things, the cost of administering Part I of the Act, and for use of government land.[2]

In the 1976 order prescribing the current regulations for the assessment of annual charges for the use of government land, the Commission explained that while all non-public licensees must reimburse the government for its costs in administering Part I of the Act, licensees who occupy public land must also pay a reasonable annual charge as a form of rental of the public land.[3] As the Supreme Court explained in *FPC* v. *Tuscarora Indian Nation*, 362 U.S. 99, 113–14 (1960), section 21 of the Act [4] authorizes licensees to acquire only private property by the exercise of the right of eminent domain and the payment of just compensation. Because the Act does not permit a taking, but permits licensees to use, occupy, and enjoy Federal lands, the Act established the system of annual land use charges as a form of rent.

Section 10(e) also cautions the Commission that "in fixing such [annual] charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges." [5] The 1976 order explained that while this provision suggests the need for a sensitivity to consumer interests, it does not preclude absolutely the assessment of reasonable annual charges, even if it is likely that these costs will be passed on to consumers.[6]

III. Revisions to Billing Procedure for Administrative Charges

A. Background

Section 11.20 of the Commission's regulations provides the manner in which licensees are charged for the Commission's administrative costs. Licensees who are not states or municipalities, with projects of more than 1.5 megawats of installed capacity, are assessed annual charges for the costs of administrative of Part I of the Act on the basis of the amount of power generated and installed capacity.[7] Generally state or municipal licensees of such projects are assessed on the basis of installed capacity only. They are not assessed a charge to the extent that they can demonstrate that they (1) sell the power produced by the licensed projects to the public without profit or (2) use the power for state or municipal purposes.[8]

The reimbursable Commission costs are determined on a fiscal-year basis. However, the present regulation, at § 11.20 (a)(4) and (b)(4), requires licensees to submit their generation data [9] on a calendar-year basis.

B. The Proposed Rule

The Inspector General recommended that the Commission require its licensees to compute their generation data on the same fiscal-year basis that the Commission uses to calculate its adminstrative costs.

The proposed rule implements the Inspector General's recommendation by requiring that generation data be based on the fiscal year and be submitted shortly after the close of the fiscal year. This synchronization would provide the government with annual fees three months earlier than under the present system. The Inspector General found that since the Commission's assessments for administrative costs in 1983 were $23.4 million, the government lost approximately $200,000 a month in interest for each month until the Commission sent licensees bills for their annual charges. By requiring generation data to be filed by November 1 of each year, instead of by February 1 of the next year, the government would be able to receive compensation for its administrative costs more expeditiously, thereby obtaining more precisely the benefit Congress intended.[10]

Since generation data are now filed on a calendar-year basis, and will be filed on a fiscal-year basis under the proposed rule, the year in which the new rule takes effect will be transitional. Depending on when the rule were to become effective, for that year only, the effect of the rule might be that licensees would report generation data for the months of October, November, and December twice; first, when they make the February 1 filing under the old rule, and then again, when they make their November 1 filing under the new rule. However, since the reimbursable costs have always been based on the fiscal year, this requirement should not result in an increase in the amount of annual charges paid. Comments are requested on this scheme of implementation, and alternative proposals will be given due consideration.

The proposed rule would also make two technical corrections: § 11.20(b) would be revised to refer to "state or municipal licensees of projects of more than 1.5 megawatts of installed capacity," [11] and § 11.20(b)(6) would be repealed as obsolete.[12]

IV. Methods for Assessing Land Use Charges

A. Background

Beginning in 1938, annual charges for government land used by hydropower licensees were based on project-by-project appraisals. This practice often proved uneconomic because of the excessive cost of appraisal in comparison to the value of the land involved. In 1942, the Federal Power

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[2] Section 10(e), 16 U.S.C. 803(e), states in pertinent part: That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; * * * and any such charges may be adjusted from time to time by the Commission as conditions may require.

[3] Change in Annual Charges for Use of Most Government Lands, 56 FPC 3860, 3862–64 and n. 9 (1976), reprinted in 42 FR 1226 (January 6, 1977).

[4] 16 U.S.C. 814

[5] 16 U.S.C. 803(e).

[6] 56 FPC at 3862.

[7] 18 CFR 11.20(a). Annual charges are assessed against each licensee on the basis of the proportion of its installed capacity and its annual generation to the total of the installed capacity and the annual generation of all projects.

[8] 16 U.S.C. 803(e).

[9] Generation data are submitted for the purpose of calculating an annual charge for administrative costs for a licensee. The data consist of the gross amount of power generated by a licensee's project during the year and the amount of power used for pumped storage pumping.

[10] Since all annual charges except headwater benefits are billed at one time, the Commission may find that, to implement this proposal in its final rule, it is necessary to amend other annual fees rules in that final rule to synchronize on a fiscal-year basis the timing for the submission of all the information necessary for the calculation of annual charges. *See, e.g.*, 18 CFR 11.22(c) (1985) (requiring a sworn statement showing the annual gross amount of energy, that is generated by a project that uses a government dam, less the energy provided free of charge to the government).

[11] Under Order No. 205, 19 FPC 907 (1958), the Commission assessed annual charges to licensees of projects of more than 100 horsepower of installed capacity. 18 CFR 11.20(a) (1958). At that time, state and municipal licensees were placed in a separate pool for the assessment of annual charges. In 1963, the Commission, pursuant to section 10(i) of the Act, 16 U.S.C. § 803(i) amended 18 CFR 11.20(a), but made no similar change with respect to state or municipal licensees. Order No. 272, 30 FPC 1333 (1963). This proposed regulation makes this change to render § 11.20 internally consistent.

[12] By its terms, § 11.20(b)(6)(i) expired 60 days after the date Order No. 205 was issued in 1958. While § 11.20(b)(6)(ii) has not expired, it merely codifies a right already set forth in the Act which does not need repetition.

Commission developed a national average value of $50 per acre.[13] Because the Commission recognized that this Federal Asset, public land, was being used rather than purchased, the Commission attempted to approximate the rental value by selecting an interest rate as a rate of return which could then be multiplied by the value of the land per acre to determine a land use charge. The Commission selected 4 percent as the rate, thereby deriving an annual land use charge of $2.00 per acre. In 1962, when the Commission increased the national average land value to $60 per acre, but retained the 4 percent interest rate, the annual land use charge was increased to $2.40 per acre.

The current regulations were adopted in 1976 in Order No. 560. The national average land value was increased to $150 per acre.[14] In an effort to ensure that the rate of return used would remain current, the Commission adopted the fluctuating rate used by the United States Water Resources Council (WRC) which was based primarily upon the average yield of long-term (15 years or more to maturity United States interest-bearing securities. Although this rate can be adjusted yearly to reflect changes in yield and the associated changing Federal borrowing costs, that rate is barred by statute from being changed more than one-quarter of a percent in any year.[15] In selecting this index, the Commission concluded that the statutory restraint would ensure that the annual land use charge would remain reasonable year to year.[16]

The Inspector General recently concluded that neither the land value nor the interest rate employed by the Commission's current regulation is up-to-date. According to the Inspector General, the Commission has been undercharging licensees by approximately $15.2 million each year for the use of about 168,000 acres of Federal land. The Inspector General recommended revising the Commission's regulations to base these land use charges on the current fair market value of the land being used and the current long-term government borrowing rate. The Inspector General also recommended replacing the national average land value with state-by-state averages.

[13] Order No. 560, 56 FPC 3860 (1976).

[14] *Id.* at 3864.

[15] Pub. L. No. 93-251.

[16] 56 FPC at 3865.

B. The Proposed Rule

1. Charges Based on Land Value and Rate of Return

The proposed rule retains the Commission's historical formula for determining annual charges for the use of government lands:

U=VR

In which:

U=annual land use charge
V=land value per acre
R=rate or return

To quantify this conceptual framework, the proposed rule identifies the best currently-available index. This preamble, however, identifies several other options which may be available by the time a final rule is promulgated. The Commission requests that commenters: (1) Identify the benefits and detriments of each index proposed from the standpoint of accurate valuation, equity, and administrative simplicity and feasibility; (2) discuss whether it is appropriate for the Commission to abandon a national valuation and adlopt instead a regional, state-by-state, or project-by-project approach; and (3) discuss whether this historical formula remains a viable means of calculating the fair market value of a licensee's use of government land.

The use of the Agricultural Land Value index, described below, in the proposed rule is not intended to imply Commission preference for that index; rather, it follows the lead of the Inspector General's report. That index is currently widely available; consequently, it is being used to illustrate how the historical computation of a land use charge would work in conjunction with that index. Nevertheless, Commission concern about the appropriateness of this index, discussed below, is one reason other alternatives are being sought in this Notice.

a. *Determination of Land Value.* The Commission has found no existing index of land values that accurately reflects current economic conditions and also conforms precisely to the context of land used for hydropower projects. However, one existing government index and an index being developed jointly by two government agencies contain information concerning the value of land that is sufficiently comparable to land used in hydroelectric projects to suggest that the Commission may soon have available a more accurate measure of the value of the Federal land used by its licensees.

(1) *Land Value Based on Agricultural Real Estate Value.* The United States Department of Agriculture publishes an "Agriculture Land Values and Markets Outlook and Situation Report," which provides a state-by-state average value per acre of farm land and buildings; the total value of farm land and buildings, by state; and the total value of farm buildings, by state.[17] The Commission is considering using the Agriculture Report's land values with modification. Because government land used in hydroelectric projects typically does not include buildings, the average value per acre of land without buildings would have to be computed. Commenters are requested to discuss how this index could be adjusted to eliminate the differential between farm real estate values and the value of land used for hydropower projects.

(2) *Land Value Based Upon Valuation of Linear Rights-of-Way.* The United States Forest Service (USFS) and the Bureau of Land Management of the United States Department of the Interior (BLM) are jointly conducting a market survey to establish representative market values for various types of linear rights-of-way crossing lands administered by the two agencies. The market survey data will be used by USFS and BLM to establish geographical zones of similar land values from which to develop a rental schedule for linear rights-of-way. Zones of similar value will be presented on a state or smaller subdivision basis. The per acre charges resulting from this survey are expected to be calculated according to a formula that includes the land value, a rate of return, and possibly other factors. It is expected that the USFS and BLM will modify the right-of-way rental schedules periodically to reflect changes in land values or rate of return.

One alternative for the Commission would be to use the same per acre charge that the USFS and BLM use for rights-of-way for transmission lines for each respective zone. Another possible alternative would be for the Commission to use the land values upon which the USFS/BLM charges are based in combination with the Commission's own rate of return, described below. Under either alternative, a licensee would submit to the Commission data indicating how many acres of United States government land used by its hydroelectric project lie within each zone. Although this index concerns linear rights-of-way, it may nonetheless be more representative of the value of land used for hydroelectric projects than

[17] Since this report is published each August, the land values derived from it can be adjusted each year to remain current.

valuation of farm lands or any other information currently published.

b. *Determination of Rate of Return.* The rate of return currently applied to the government land value for determining the annual charges for use of Federal lands is theoretically based on the average yield during the fiscal year of interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity. However, as discussed above, the rate, which was established at 6⅜ percent in 1977, may not be raised or lowered by more than one-quarter of a percent per year. Thus, the rate for 1985 is 8⅜ percent. Contrary to the assumption in the 1976 order establishing the current method for computing this rate of return, this rate has not accurately reflected market conditions over the last decade.

Since the Commission believes that the long-term marketable securities interest rate represents a reasonable means by which to determine the rate of return for use of the government's land, the proposed rule continues using this measure. However, it abandons the artificial one quarter of a percent per year limitation on adjustments. Under the proposed rule, the calculation made at the end of each fiscal year of the average yield of long-term marketable securities of the United States would provide the rate of return for the use of the government land for that year.

2. Other Methods of Valuation of Federal Land Use

Although the Commission is proposing to continue its historical method of calculating Federal land use charges, it recognizes that there are other approaches which do not require computation of per-acre land values. For instance, the USFS has published a notice of proposed policy to determine special-use fees for non-Federal hydroelectric projects which are exempt from Commission licensing requirements and annual charges.[18] Under the USFS proposal, a project with a capacity of 5 megawatts or less, located on National Forest System land, would be charged a fee of 3 percent of the project's gross sales.[19] USFS proposed this method because its survey of practices on private lands showed that landowners typically received a similar percent of gross sales as the fee for the use of their resources.

Commenters are requested to suggest how the fair market value of the land use can be computed most accurately, without an undue economic burden on licensees or an unreasonable administrative burden upon the Commission. Thus, the Commission is seeking an efficient market-based system that is as self-implementing as possible. The Commission is also considering determining land use charges on the basis of the benefit to the licensee by setting the annual land use charge as a percentage of gross income, as the USFS is proposing, or as a flat rate per kilowatt-hour. The Commission requests comments whether a charge that is predicated on the amount of generation or sales from the project can be reasonably related to the portion of the project which occupies Federal land, so that the charge reflects an apportionment of the benefit accrued from the Federal lands, and whether such a method of assessing charges would be within the Commission's authority under section 10(e) of the Act.

The Commission also requests comments on the advisability of permitting licensees to submit independent appraisals to contest the accuracy of an annual land use charge, and whether an appraisal system could be the sole basis for determining fair market value of Federal land use. Commenters should also identify the standards and criteria that should be used to make appraisals.

Finally, the Commission requests comments whether retention or abandonment of the historical formula would better avoid unreasonable increases in the price of power paid by consumers.

3. Other Revisions

Historically, the Commission has determined that fees for right-of-way usage of Federal lands would be less than for other project uses, because land so used remained available for multiple uses. Thus, § 11.21(c) provides that annual charges for the use of government lands for transmission line right-of-way will be one-half the charge for other government lands. However, transmission lines and appurtenant structures may have a number of detrimental effects, including effects on the aesthetic quality of land to the extent that market value would be lowered, the inhibition of early attack by air on fires when transmission lines cross canyons, and potential damage to watershed and wildlife resources by other uses attracted by the access roads and spurs required for inspection and maintenance of transmission lines. Since these detriments may preclude a full range of multiple uses, and may decrease the value of the adjacent land, the Commission proposes to eliminate the discount in § 11.21(c).

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, requires certain analyses of proposed agency rules that will have a "significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed revisions to the billing procedures for annual charges for administering Part I of the Act, if promulgated, will not have a significant economic impact on a substantial number of small entities. This aspect of this rulemaking would base annual charges on generation data for the government fiscal year, rather than the calendar year, in order to synchronize the data used and to eliminate the interest lost as a result of the three-month lag between the time the reimbursable Commission costs are incurred and the time licensees file their generation data.

Although the change will increase the government's revenues by providing three month's additional interest on the annual charges paid, it will change the timing of payments by licensees, not the amount paid. The delay caused by the existing regulation confers a benefit upon licensees not intended by the Act. While certain licensees may be small entities, it is unlikely that this change will have a significant impact upon a substantial number of them. For example, when the 1984 annual administrative charges are compared under the existing payment system and the proposed system, one finds that the government would have earned approximately $600,000 in additional interest from these administrative charges had the proposed system been in place then. Since licensees pay these fees based upon installed capacity and generation data, the licensees with the greatest installed capacity and generation would bear the largest percentage of this lost interest. Similarly, the government would have earned additional interest on other annual charges for use of government dams, structures, and Federal land had the Commission been able to send bills out earlier. However, these other annual charges together comprised only 20 percent of total Commission annual charge revenues, and therefore the

[18] 49 FR 23902 (June 8, 1984).

[19] This proposal is similar to an early Commission rule, issued in 1930, that assessed fees at a rate of ten cents times installed capacity times the proportion of government land to total project land

additional interest lost from those charges, and charges for use of tribal land, which are billed at the same time, would not have had a substantial effect upon a significant number of small entities.

The Commission also certifies that the proposed revisions to the methodology for assessing land use charges will not have a significant impact on a substantial number of small entities. Under its responsibility under Part I of the Act to license hydroelectric projects, the Commission has issued licenses for projects ranging from large projects owned by major utilities to small projects used by individuals to provide electricity for their homes. The Commission had approximately 858 licenses in effect as of November 1985. Of these licenses, approximately 283 were for projects on Federal land. These 283 projects are held by approximately 148 licensees. Thirty-four of these licensees are major jurisdictional utilities. Thus, while the Commission does not know what exact number of the remaining 114 licensees that use Federal land are "small entities" under the RFA, the Commission knows that some of these licensees may be major non-jurisdictional utilities, and some are major companies, such as Ford Motor Company and Crown Zellerbach Corporation. Accordingly, the Commission concludes that this proposed regulation is unlikely to affect a significant number of small entities.

Moreover, because of the significant capital resources required to plan, construct, and operate a large project, and the fact that annual fees for the use of Federal land presently constitute a small proportion of these costs, it is unlikely that there will be a significant impact on these licensees no matter which method the Commission ultimately chooses to calculate these annual charges. While the Inspector General did conclude that the government was undercharging licensees by approximately $15.2 million for the use of Federal land, the Commission does not expect small entities to be required to make large payments as a result of this Notice. First of all, the Commission expects to refine the Inspector General's analysis in significant ways that, while more accurately valuing the use of this land, may also result in less additional revenue than the amount projected by the Inspector General. Second, a Commission study of 72 projects demonstrates that there is a relationship between the size of the project and the amount of Federal land used. Of the 24 small projects on Federal land (1.5 megawatts or less), the amount of Federal land used ranged from 2141 acres to 1 acre. The project which used 2141 acres, however, is owned by a major jurisdictional utility. The rest of these small projects averaged only 23 acres of Federal land. None of the methods being considered in this rule would assess a substantial charge for the use of 23 acres.[20] Moreover, even if the increase is large, in relation to the entire cost of the project, it is unlikely that annual charges would have a material effect upon the ability of any small entity to own or operate a project that uses Federal land. Therefore, the Commission does not expect to see a significant economic effect on a substantial number of small entities.

However, if, in the Commission's analysis of the comments and the methodology chosen, and based on an assessment of how the methodology chosen will affect small entities, it appears the final rule will have a significant effect on a substantial number of small entities, the Commission will consider developing provisions in the final rule to mitigate any adverse impact on small entities.

VI. Paperwork Reduction Act Statement

This proposed rule is being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3502 (1982) and OMB's regulations, 5 CFR 1320.13 (1985). Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Gary L. Nordan, (202) 357–5777). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VII. Comment Procedure

The Commission invites interested persons to submit written comments on the matters proposed in this notice. The Commission also invites commenters to submit any other suggestions regarding assessment methods for charges for use of Federal land. An original and 14 copies of such comments must be filed with the Commission no later than March 4, 1986. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM86–2–000.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 11 fo Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 11—[AMENDED]

1. The authority citation for Part 11 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR Part 142 (1978), unless otherwise noted.

2. Section 11.20 is revised to read as follows:

§ 11.20 Cost of administration.

(a) Reasonable annual charges will be assessed under this section by the Commission against each licensee to reimburse the United States for the costs of administration of Part I of the Federal Power Act.

(b) For licensees, other than state or municipal, of projects of more than 1.5 megawatts of installed capacity:

(1) A determination will be made for each fiscal year of the costs of administration of Part I of the Federal Power Act chargeable to such licensees, from which will be deducted such administrative costs allocated by the Commission to minor part licenses for which administrative charges are waived under section 10(i) of the Act and those fixed by the Commission in determining headwater benefit payments.

(2) The Commission will assess each licensee annually for the costs of administration determined under paragraph (b)(1) of this section according to the proportion that the annual charge factor for its project bears

[20] Although the Commission expects to find that small entities are usually licensees of small projects, the Commission has also scrutinized the amount of Federal land used by a sample of 24 middle-sized (7.5 megawatts–37.5 megawatts) and large (over 37.5 megawatts) projects. In neither case is the amount of Federal land used large enough to warrant concern under the RFA. Thus, middle range projects used between 0.6 acres and 2266 acres, with an average of 415 acres. Large projects used between 1.4 acres and 15,000 acres, with an average of 1938 acres.

to the total of the annual charge factors under all licenses subject to paragraph (b).

(3) The annual charge factor for each project will be found as follows:

(i) For a conventional project the factor is its authorized installed capacity (horsepower) plus 150 times its annual energy output in millions of kilowatt-hours.

(ii) For a pure pumped storage project the factor is the authorized horsepower.

(iii) For a mixed conventional pumped storage project the factor is its authorized installed capacity (horsepower) plus 150 times its gross annual energy output in millions of kilowatt-hours less 100 times the annual energy used for pumped storage pumping in millions of kilowatt-hours.

(4) On or before November 1 of each year, each licensee must file with the Commission a statement under oath showing, for the period of project operation from October 1 of the preceding calendar year to September 30 of the current calendar year ("fiscal year"), the gross amount of power generated (or produced by nonelectrical equipment) and the amount of power used for pumped storage pumping by the project during the preceding fiscal year, expressed in kilowatt hours. The annual charge for any project for which a statement is not filed on or before November 1 will be determined based on a Commission staff estimate of the energy output of the project for the preceding fiscal year.

(c) For state or municipal licensees of projects of more than 1.5 megawatts of installed capacity:

(1) A determination will be made for each fiscal year of the cost of administration under Part I of the Federal Power Act chargeable to such licensees from which will be deducted the total amount assessed against state and municipal licensees holding minor and minor-part licensees.

(2) The Commission will assess each licensee annually for the total actual cost of administration under paragraph (c)(1) of this section according to the proportion that the authorized installed capacity of its project bears to the total such capacity under all licenses subject to paragraph (c) of this section.

(3) A licensee subject to the assessment of annual charges under paragraph (c) of this section will be granted an exemption from such charges to the extent, if any, to which it may be entitled under section 10(e) of the Act provided the data is submitted as requested in paragraph (c)(4) and (c)(5) of this section.

(4) To enable the Commission to compute on the bill for annual charges the exemption to which a licensee is entitled because of the use of power by the licensee for state or municipal purposes, on or before November 1 of each year, each licensee must file with the Commission a statement under oath showing the following information with respect to the generation disposition of project power during the preceding fiscal year, expressed in kilowatt-hours:

(i) Gross amount of power generated by the project;

(ii) Amount of power used for station purposes and lost in transmission, etc.; and

(iii) Net amount of power available for sale or use by licensee, classified as follows:

(A) Used by licensee; and

(B) Sold by licensee.

(5) When the power from a licensed project owned by a state or municipality enters into its electric system, making it impracticable to meet the requirements of paragraph (c)(4) of this section with respect to the disposition of project power, such licensee may, in lieu thereof, furnish similar information with respect to the disposition of the available power of the entire electric system of the licensee.

(d) For licensees of projects of 1.5 megawatts or less of installed capacity for which administrative charges have not been waived under section 10(i) of the Act the annual charge under this section will be 5 cents per horsepower or $5 for each project, whichever is more.

(e) For projects involving transmission lines only, the minimum annual charge under this section will be $5.

(f) No licensee under a license issued prior to August 26, 1935, will be required to pay annual charges in an amount that exceeds an amount prescribed in such license.

(g) For projects not covered by the paragraphs (a) through (f) of this section, reasonable annual charges will be fixed by the Commission after consideration of the facts in each case.

3. Section 11.21 is revised to read as follows:

§ 11.21 Use of government lands.

(a) *Applicability.*—(1) General rule. Except as provided in paragraph (a)(2) of this section, any licensee that uses, occupies, or enjoys government lands (other than lands adjoining or pertaining to a government dam or other structure owned by the United States) must pay an annual charge assessed under this section.

(2) No licensee under a license issued prior to August 26, 1935, will be required to pay annual charges in an amount that exceeds an amount prescribed in the license.

(b) *Calculation of annual charge.* (1) Annual charges for the use, occupancy, and enjoyment of government lands are the product of a state-by-state average land value derived from Agriculture Land Values and Markets Outlook and Situation Report published by the United States Department of Agriculture, but not including the value of any building, multiplied by a rate of return established under paragraph (b)(2) of this section.

(2) The rate of return used to determine annual charges under this section will be the discount or interest rate which equals the average yield during the fiscal year ending September 30th of the previous calendar year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity.

(c) The minimum annual charge under this section will be $25 for any project having an installed capacity of more than 500 kilowatts and $10 for any project with an installed capacity of 500 kilowatts or less.

[FR Doc. 86-40 Filed 1-2-86; 8:45 am]
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 204

[Docket No. R-85-965 ; FR-2147]

Temporary Mortgage Assistance Payments

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Temporary Mortgage Assistance Payments (TMAP) program is authorized by section 341 of the Housing and Community Development Act of 1980 (Pub. L. 96-399, 94 Stat. 1614), amending section 230 of the National Housing Act (12 U.S.C. 1715u). HUD published a proposed rule to implement the program on April 5, 1982 (47 FR 14495). On August 2, 1982, the Department published a final rule in the **Federal Register** (47 FR 33252). However, the rule ("1982 final rule") contained no date certain as the effective date, and because implementation of that rule was

judicially enjoined (*Ferrell* v. *Pierce*, 560 F. Supp. 1344, (N .D. Ill., 1983); *aff'd* 743 F. 2d 454, (7th Cir., 1984), the Department has withdrawn that rule (50 FR 12527, March 29, 1985 and 50 FR 14379, April 12, 1985). The Department has decided to revise the 1982 final rule in several respects. Therefore, the rule is being published as a proposed rule, on which public comment is solicited.

DATE: Comments must be received on or before March 4, 1986.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW. Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard B. Buchheit, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 755-6672. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The only program of mortgage foreclosure relief now in effect for FHA-insured homeowners is the assignment program, under which HUD assumes the mortgage lender's rights and obligations under the mortgage (in return for payment of the lender's mortgage insurance claim) and works out a forbearance agreement to allow the homeowner to pay delinquencies over the period of the mortgage. Under the Temporary Mortgage Assistance Payments ("TMAP") program, the mortgage lender retains its role, while HUD temporarily makes all or part of the homeowner's loan payments to the lender, for which the homeowner is obligated to repay HUD. Under the TMAP program, HUD's loan is secured by a lien on the home. These differences are dictated by statute and were not challenged in the *Ferrell* litigation . (See sections 230(a) and 230(b) of the National Housing Act, 12 U.S.C. 1715u(a) and (b), for TMAP and assignment program authority.)

In redrafting this rule, HUD has considered its continuing obligations under the consent decree entered in *Ferrell*. It has also considered other events that have taken place since publication of the 1982 final rule. The changes proposed are described below.

Changes From the 1982 Final Rule

1. Calculation of Date of Default)—§ 203.640(a)(3)

The 1982 final rule stated that the date of default would be "60 days following the first day of the most recent month in which the mortgagor made a payment(s) within the month due which brought the account current." Under that provision, if a lender were to accept a payment after the month in which it was due, the date of default would not be advanced. HUD is proposing to change the calculation of the date of default to "30 days after the due date of the oldest unpaid installment." Under the revised provision, payments made by a mortgagor on amounts that are past due would be applied to the oldest unpaid installments, so that the date of default would be advanced by those payments. Once the date of default is established for purposes of processing the foreclosure relief request, it would not be affected by subsequent payments.

2. Interest Rate on TMAP Loan—§ 203.644(a)

The 1982 final rule provided for interest to accrue on the HUD loan for TMAP at the maximum interest rate allowed under 24 CFR 203.20 for new home loans. At the time that final rule was published, § 203.20 stated a specific maximum rate for mortgages insured by FHA. The statutory authority to set maximum rates was repealed for insured mortgages that are eligible for the TMAP and assignment programs by section 404 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983). Accordingly, § 203.20 was revised to eliminate reference to a specific interest rate and to permit the original mortgage rate to be determined by agreement between the lender and the borrower. (See 49 FR 19457, May 8, 1984 and 49 FR 22635, May 31, 1984.) Therefore, the reference in the 1982 final rule to the maximum rate allowed under § 203.20 is outdated and must be changed in this rule. This rule would require the interest rate on the TMAP loan to be the same rate as the rate charged on the FHA-insured first mortgage loan on the property. This is consistent with the current practice in the assignment program.

3. Date Interest Starts to Accrue on TMAP Loan—§ 203.644(a)

The 1982 final rule provided that interest accrued on the TMAP loan from the dates that the temporary mortgage assistance payments were made. In the assignment program, although there is no interest accrued on interest, the interest that accrues during the forbearance period on outstanding principal or on advances is not forgiven. In the TMAP program, a loan is made to the mortgagor to cover mortgage payments that include both principal and interest. Charging interest on each TMAP when it is paid to the mortgagee would increase the repayment obligation of the mortgagor as compared to what a mortgagor in the assignment program would pay. It would increase the obligation by accruing interest on a loan amount that included payment of interest as well as principal, whereas in the assignment program interest is accrued only on principal and on advances for such payments as taxes. Charging no interest on the TMAPs until they terminated would decrease the repayment obligation of the mortgagor as compared to assignment program practice, because it would amount to forgiveness of interest accruing on the portion of the loan amount attributable to principal and advances during that period. However, HUD has decided to provide in this proposed rule that interest will accrue from the date TMAPs are terminated.

4. Date Assistance is Due to be Repaid—§§ 203.644(a) and 203.649

Under the 1982 final rule, the TMAP loan would have been "immediately due and payable" upon termination of the temporary mortgage assistance payments. Section 203.649 of that rule provided that forbearance assistance under the assignment program was to be repaid upon termination of the forbearance period. In each case, the Department retained the discretion to schedule repayment over a considerable length of time. However, there was no requirement that it do so.

The practice in the assignment program has been to base repayment on the mortgagor's ability to pay. The maximum time period allowed for repayment is the remaining term of the mortgage plus ten years. This rule makes it clear that neither TMAP assistance nor forbearance assistance is immediately due and payable. The borrower will be allowed to repay the assistance over the remaining term of the mortgage loan, extended, if necessary, by up to ten years.

5. Percentage of Income Required To Be Paid for Housing—§§ 203.641 and 203.646

The HUD Handbook under which the assignment program has been operated provided that, during the period of reduced or suspended payments, the borrower would not be required to pay

more than 35 percent of net effective income for housing expenses. Thus, the level of assistance available was based on the difference between 35 percent of income and the total housing expense, which is the mortgage payment—including escrowed amounts—plus maintenance and utility expenses.

The 1982 final rule made no reference to any specific limit a borrower could be required to pay, but stated that the amount of assistance would be determined by the Secretary, based upon an examination of the borrower's condition and circumstances, and the borrower's ability to contribute to the mortgage payments.

This rule would apply to TMAP the current practice in the assignment program, by providing that borrowers on reduced or suspended payments must not be required to pay more than 35 percent of their net effective income for housing expenses. Net effective income is defined as gross monthly income less city, State and Federal income and Social Security taxes. Housing expenses are defined as the sum of the borrower's monthly expenses for maintenance, utilities, hazard insurance, and the monthly mortgage payment, including amounts escrowed for expenses such as taxes.

6. Application of Rental Income—§§ 203.606(b)(3), 203.640(b)(4) and 203.645(b)(4)

Section 203.606(b)(3) of the rule now in effect provides that a lender may initiate foreclosure without first considering forbearance assistance (under the assignment program) if the borrower owns two or more rental properties and the rental income from the property under review is not being applied to the loan on that property. The 1982 final rule would have changed that language and added two other sections that would automatically preclude consideration of assistance if a borrower had two or more rental properties and the rental income from all of those properties was not being applied to the mortgage under review. This rule would restore the original language of § 203.606 and pattern §§ 203.640 and 203.645 on it, so that, with reference to consideration for both TMAP assistance and forbearance, the rental income from a property need only be applied to the loan on that property—consistent with current practice in the assignment program.

7. Review of Payment Plan—§§ 203.643 and 203.648

The 1982 final rule required HUD to review the borrower's payment plan under only one circumstance—if the borrower's income fell by at least $50 per month and the borrower still required to pay part of the mortgage payment. However, the practice in the assignment program (under a Court-approved settlement agreement) was to require review of payment plans under any of five circumstances:

(a) Before any action has been taken by reason of mortgagor default;

(b) When the terms of such a plan expire;

(c) When a plan is in default for three months or longer;

(d) When the terms of an existing plan extend more than six (6) months from the date of the settlement agreement; or

(e) When a mortgagor so requests for good cause.

This rule would adopt, with minor modifications, four of these five bases for requiring review. (The other item, (d), is inapplicable by its own terms.) The provision of the 1982 final rule requiring review of a payment plan when the mortgagor's income decreased by $50 or more is no longer needed because the broader criteria are being adopted.

8. Homeownership Counseling—§§ 203.643(a), 203.648(a), 203.652(a), and 203.654

Section 230(d) of the National Housing Act requires HUD to provide homeownership counseling to persons that are assisted under the assignment and TMAP programs. In 1983, Congress reiterated its support for this provision by enacting section 418 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983). That provision removed the qualifying phrase, "to the extent practicable," that had appeared in the original statutory mandate to HUD to provide counseling.

Recognizing this emphasis on homeownership counseling for TMAP and assignment program participants, this rule would provide that applicants, as well as participants, be supplied with information about the availability of counseling at various points. HUD will furnish a list of HUD approved counseling agencies when a mortgagor applies for mortgage foreclosure relief (§ 203.652(a)), and will offer to provide a TMAP or assignment participant with referral to a counseling agency when HUD approves the assistance and when HUD seeks additional financial information from the person in connection with establishing or revising a repayment agreement (§§ 203.643(a), 203.648(a), and 203.654).

9. Employability—Reasonable Prospect of Repayment

In determining the employability of an unemployed mortgagor—particularly crucial to the determination of the reasonable prospect of repayment in localities where employment opportunities have decreased substantially—it has been HUD policy since March 1983 to resolve doubt in favor of a mortgagor who has a favorable employment record and is actively seeking work. This HUD policy was noted with approval in the House Committee Report (H. Rep. No. 123, 98th Cong., 1st Sess. 68) on the bill that eventually became the Housing and Urban-Rural Recovery Act of 1983.

That Committee Report suggested that the policy be stated in the TMAP regulations. We have not included the policy in this rule, because the rule does not generally reach the level of detail of how to assess the reasonable prospect of repayment in varying circumstances. However, the revised Handbook 4330.2, which is being issued in conjunction with this rule, does contain a statement of this presumption of employability.

10. Applicability of TMAP to Mortgages on Indian Land

A proposed rule was published last year (49 FR 41211, October 19, 1984) to implement section 248 of the National Housing Act (added by section 422 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181), which authorizes the Secretary to insure mortgages on one to four family dwellings located on Indian lands. Now that a final rule on that subject is nearing publication, we believe it necessary to address, in this proposed rule, the applicability of the TMAP and assignment programs to these mortgages.

Section 248 of the National Housing Act gives the mortgagee the right to assign its interest to the Secretary and receive its insurance benefits after 90 days of default, regardless of whether the default was the result of circumstances beyond the mortgagor's control. That provision is being implemented by § 203.438 of the rule making referenced above.

However, the Secretary has determined that with reference to mortgagors of property on Indian lands—insured under § 203.43h or § 235.32 as set forth in the other rule—who become in default for circumstances beyond their control, it is appropriate to permit temporary mortgage assistance payments. Since alienation of Indian trust land is difficult

and a mortgagee has a right to assign a mortgage on such land after 90 days of default, this proposed rule contains changes to § 203.640(a) to recognize that for property on Indian lands, TMAP should be considered when the mortgagee is starting the process to assign the mortgage (under § 203.438), rather than to foreclose. In addition, § 203.650 is proposed to be revised to provide that, before it seeks assignment, the mortgagee must notify the mortgagor of such property that the mortgagor is in default, that assignment will be sought, and that the mortgagor may apply to the Secretary for TMAP. Thus, if a mortgagee gives the proper notice to the defaulted mortgagor and HUD, and the mortgagor request TMAP assistance, HUD would consider the application as it would any other application for assistance. If the mortgagor applies for TMAP, HUD would make a decision on that application before acting on the mortgagee's application for mortgage insurance benefits in return for assignment of the mortgage. When a final rule is issued, § 203.438 will be amended to provide that if HUD decides not to approve TMAP for the mortgagor, HUD would accept assignment from the mortgagee and pay insurance benefits retroactively. Because of the statutory differences between the basis for assignment under the FHA insurance program for Indian reservation land and for other properties, this rule proposes that §§ 203.650–203.660 apply to Indian mortgagors, but § 203.645, which deals with assignment of mortgages based on the mortgagor's eligibility for forebearance, would not apply.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

The rule was listed as sequence number 802 under the Office of Housing in the Department's Semiannual Regulatory Agenda published on October 29, 1985 (50 FR 44166, 44183), under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because although it changes the form of assistance likely to be provided homeowners in default on FHA-insured mortgage loans, it does not make any major changes in the nature of HUD's assistance to them.

The mortgage insurance programs eligible for consideration under this rule are listed in the Catalog of Domestic Assistance under the following numbers: 14.105, 14.108, 14.117, 14.118, 14.119, 14.120, 14.121, 14.122, 14.133, 14.140, 14.152, 14.159 and 14.165.

Paperwork Reduction Act. Information collection requirements contained in this regulation (§§ 203.643(a), 203.644(d), 203.648(a), 203.649(d) and 203.652(b)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. §§ 3501–3520) and have been assigned OMB Control Numbers 2502–0159 and 2502–0169.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

Accordingly, 24 CFR Part 203 would be amended as follows:

1. The authority citation for Part 203 would be revised to read as follows, and any other authority under any subpart or section in Part 203 would be removed.

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. The Table of contents for Part 203, Subpart C is amended by removing the centerheading "Assignment of Mortgages to HUD".

3. The Table of Contents for Subpart C is further amended by adding a new centerheading, §§ 203.640–203.649, by revising the entries for §§ 203.650–203.654, by adding an entry for § 203.655, by revising the entry for § 203.656, and by removing the entries for §§ 203.658–203.660, to read as follows:

Subpart C—Servicing Responsibilities

* * * * *

Temporary Mortgage Assistance Payments and Assignment of Mortgages to HUD

Sec.

* * * * *

2. Section 203.350a would be revised to read as follows:

§ 203.350a Assignment of defaulted mortgage.

When the assignment of a defaulted mortgage to the Commissioner is accomplished under § 203.350 or § 203.645, the mortgagee shall file the assignment of the mortgage to the Commissioner for record within 30 days of the Commissioner's written approval of such assignment, or within such further time as may be authorized in writing by the Commissioner.

3. Section 203.500 would be revised to read as follows:

§ 203.500 Mortgage servicing generally.

This subpart identifies servicing practices that the Secretary considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Secretary. Failure to comply with this subpart shall not be a basis for denial of insurance benefits, but a pattern of refusal or failure to comply will be cause for

withdrawal of a mortgagee's approval. It is the intent of the Department that no mortgagee commence foreclosure or acquisition of the property until the requirements of §§ 203.600 through 203.656 and implementing instructions have been followed. The Department takes no position on whether a mortgagee's refusal or failure to comply with §§ 203.640 through 203.656 is a legal defense to foreclosure; that is a matter to be determined by the courts.

4. Section 203.606 would be revised to read as follows:

§ 203.606 Pre-foreclosure review.

(a) Before initiating foreclosure, the mortgagee shall ensure that all servicing requirements of this subpart have been met. The mortgagee shall not commence foreclosure for a monetary default unless at least three full monthly installments due under the mortgage are unpaid after application of any partial payments which may have been accepted but not yet applied to the mortgage account.

(b) If the mortgagee determines that any of the following conditions has been met, the mortgagee may initiate foreclosure without sending the notices required by §§ 203.650 and 203.651, and without the delay in foreclosure required by paragraph (a) of this section:

(1) The mortgaged property has been abandoned, or has been vacant for more than 60 days.

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of honoring his or her mortgage obligation.

(3) The mortgagor owns two or more properties occupied by tenants who are paying rent, and the rental income from the property under review is not being applied to the mortgage on that property.

(4) The property is owned by a corporation or partnership.

5. A new center caption and §§ 203.640 through 203.649 would be added, to read as follows:

Temporary Mortgage Assistance Payments and Assignment of Mortgages to HUD

§ 203.640 Temporary mortgage assistance payments.

(a) The Secretary may make temporary mortgage assistance payments (TMAP) to the mortgagee on behalf of a mortgagor who owns the property, when the following conditions are met:

(1) The mortgagee has informed the mortgagor (under § 203.650) that it intends to foreclose the mortgage or, in the case of a mortgage insured under § 203.43h or § 235.50 (involving an Indian mortgagor), it has informed the mortgagor (under § 203.695) that it intends to assign the mortgage to the Secretary;

(2) At least three full monthly installments due on the mortgage are unpaid after the application of any partial payments which may have been accepted but not yet applied to the mortgage account;

(3) The mortgagor's default has been caused by circumstances beyond the mortgagor's control that rendered the mortgagor temporarily unable to correct the delinquency within a reasonable time and to make full mortgage payments. For the purpose of evaluating this criterion, payments will be applied to the oldest unpaid installment and the date of default shall be 30 days after the due date of the oldest unpaid installment. Once the date of default is established for purposes of processing the request for foreclosure relief under § 203.652, it will not be affected by subsequent payments;

(4) There is a reasonable prospect that the mortgagor will be able to:

(i) Resume full mortgage payments within 36 months after the beginning of the period for which assistance is provided, or upon termination of assistance;

(ii) Begin repayment of assistance at a time designated by the Secretary; and

(iii) Pay the mortgage in full by its maturity date or by such extended maturity date (not more than 10 years after original maturity) as shall be determined by the Secretary and consented to by the mortgagee. The amount and duration of the mortgage delinquency will be considered in determining whether this criterion is met;

(5) The property is the mortgagor's principal place of residence. This criterion may be waived by the Secretary if such waiver is determined to be in the best interests of the Department;

(6) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary. This criterion may be waived by the Secretary if such waiver is determined to be in the best interests of the Department; and

(7) The Secretary determines that such payments are necessary to avoid foreclosure (or assignment in the case of a mortgage insured under § 203.43h or § 235.50) and are not inappropriate in the case of the mortgagor.

(b) A mortgage shall not be eligible for TMAP in any case where:

(1) The mortgaged property has been abandoned, or has been vacant for more than 60 days;

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage;

(3) The mortgagee is prevented by law from initiating foreclosure of the mortgage;

(4) The mortgagor owns two or more properties occupied by tenants who are paying rent and the rental income from the property under review is not being applied to the mortgage on that property;

(5) TMAP have been previously provided on behalf of the mortgagor, unless the mortgagor has made full mortgage payments and any repayments requested by the Secretary for at least twelve months from the time such previous assistance was terminated;

(6) The property is owned by a corporation or partnership; or

(7) The mortgagor is unwilling or unable to execute such documents as the Secretary may require (including security instruments creating a lien on the property) to assure repayment of the TMAP to the Secretary.

§ 203.641 Amount of temporary mortgage assistance payments.

(a) Monthly TMAP on behalf of a mortgagor will be in an amount sufficient to assure that the mortgagor pays no more than 35 percent of net effective income for housing expenses. For this purpose, a mortgagor's net effective income is monthly gross income less city, State and Federal income and Social Security taxes; housing expenses are the sum of the mortgagor's monthly expenses for maintenance, utilities, hazard insurance, and the monthly mortgage payment, including escrowed amounts. This provision shall not prevent a mortgagor from contributing a greater portion of net effective income if the mortgagor submits a written request to do so.

(b) The initial disbursement of TMAP may include the first monthly payment computed in accordance with paragraph (a) of this section, together with such additional sum as is necessary to make the payments on the mortgage current.

§ 203.642 Period of temporary mortgage assistance payments.

(a) TMAP shall terminate on the earliest of the following dates:

(1) Eighteen months after the effective date of the first monthly TMPA, except that such period may be extended for an additional period not to exceed 18 months where the Secretary has determined that such extension is necessary to avoid foreclosure and there

is a reasonable prospect that the mortgagor will be able to make the payments and repayments specified in § 203.640(a)(4). The effective date of the first monthly TMAP shall be the due date of the monthly payment on the insured mortgage for which the first montly TMAP payment is credited;

(2) The date on which three payments of the mortgagor's portion of the full monthly payment are due and unpaid by the mortgagor, except that TMAP may be continued if the Secretary determines that the default was caused by circumstances beyond the mortgagor's control, and that such extension does not exceed the period provided in paragraph (a)(1) of this section;

(3) The date on which the mortgagor conveys title to the property; or

(4) The date on which the Secretary determines that, because of the mortgagor's financial circumstances—

(i) Payents are no longer necessary to avoid foreclosure, or

(ii) There is no longer a reasonable prospect that the mortgagor will be able to make the payments and repayments specified in § 203.640(a)(4).

(b) TMAP shall be made only to the extent approved by the Congress in appropriation Acts.

§ 203.643 Periodic review of mortgagor's financial circumstances.

(a) While TMAP are being provided, the mortgagor shall provide information to the Secretary as to occupancy, employment, family conposition and income when a review of the payment plan is being undertaken under paragraph (c) of this section, in a form prescribed by the Secretary. When HUD requests such information, it will offer to furnish the mortgagor with a referral to a local agency approved by HUD to provide homeownership counseling in connection with this program, or, if there are no such agencies, HUD will offer to provide such counseling directly.

(b) TMAP shall be terminated if the mortgagor fails to furnish the information required in paragraph (a) within 20 days after the date of the Secretary's request, except that TMAP may be continued if the Secretary determines that the failure to furnish the information was because of circumstances beyond the mortgagor's control.

(c) Payment plans will be reviewed and, if appropriate, restructured by the Secretary in consultation with the mortgagor, under the following circumstances:

(1) Before Hud takes any action because of a mortgagor's monetary default;

(2) Before expiration of the temporary mortgage assistance payment plan, unless the plan, as extended, already provides for 36 months of assistance;

(3) When a plan is in default for two months or longer; or

(4) When a mortgagor requests review for good cause, or the facts or circumstances that caused HUD to enter into the plan are substantially changed.

(d) The amount of TMAP may be adjusted from time to time to reflect the mortgagor's financial circumstances.

[Information collection requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of '44 U.S.C. 3501–3520) and have been as. d OMB control number 2502–0159].

§ 203.644 Repayment of temporary mortgage assistance payments.

(a) The TMAP loan will start to accrue interest at the rate specified in the FHA-insured first mortgage on the date TMAP are terminated. The assistance will be repaid to the Secretary under a payment plan executed in accordance with paragraphs (b) and (c) of this section.

(d) The payment plan, to be executed by the mortgagor and the Secretary upon termination of TMAP, will provide for monthly payments by the mortgagor:

(1) In an amount determined by the Secretary upon an examination of the mortgagor's financial condition and circumstances, and the mortgagor's ability to contribute to the mortgage payments; or

(2) In such other amount, or amounts as may be prescribed by regulation at the time of execution of any repayment agreement.

(c) All assistance must be repaid by no later than the end of the remaining term of the mortgage, extended, if necessary, by up to 10 years.

(d) The mortgagor shall provide the information required in § 203.643(a) to the Secretary upon termination of the TMAP, and at such other times as the Secretary may require, until all TMAP have been repaid.

(e) The mortgagor shall execute such documents as the Secretary may require (including security instruments creating a lien on the property) to assure repayment to the Secretary.

[Information collection requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501–3520) and have been assigned OMB control number 2502–0159.]

§ 203.645 Assignment of mortgages.

(a) For mortgages other than those insured under § 203.43h or § 235.50, the Secretary will accept an assignment of a mortgage that meets the conditions of § 203.640(a) (1) through (6) if such action is determined by the Secretary to be necessary to avoid foreclosure and if the Secretary determines that TMAP would be inappropriate in the case of the mortgagor. In applying § 203.640(a)(4), the term "assistance" is deemed to refer to forbearance assistance under § 203.646. Among other grounds, TMAP shall be determined to be inappropriate if the mortgagee refuses to accept TMAP, or if extension of the mortgage maturity (by not more than 10 years after the original maturity) would be necessary in order for the mortgagor to afford repayment and the mortgagee is unwilling to extend the maturity date. If a mortgagor is found ineligible for TMAP because the mortgagor is unable to execute the document required by the Secretary to assure repayment of the TMAP (§ 203.640(b)(7)), an assignment will be accepted where the inability to execute the necessary documents is caused by circumstances beyond the mortgagor's control.

(b) The mortgage shall not be eligible for assignment in any case where:

(1) The mortgaged property has been abandoned, or has been vacant for more than 60 days;

(2) The mortgagor, after being clearly advised on the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage;

(3) The mortgagee is prevented by law from initiating foreclosure of the mortgage;

(4) The mortgagor owns two or more properties occupied by tenants who are paying rent, and the rental income from the property under review is not being applied to the mortgage on that property;

(5) TMAP have been paid on behalf of the mortgagor within twelve months of the date of the assignment request to the Secretary, except that the Secretary may accept assignment of a mortgage with respect to which TMAP were made immediately before the assignment for the sole purpose of extending the term of repayment under the mortgage so that the mortgagor will be able to make the full payments on the mortgage;

(6) The property is owned by a partnership or corporation; or

(7) TMAP were not provided because the mortgagor was unwilling to execute the documents required by the Secretary to assure repayment of the TMAP.

§ 203.646 Amount of forbearance.

The Secretary will provide assistance through forbearance to a mortgagor whose mortgage has been assigned under § 203.645 or may provide such

assistance to a mortgagor whose mortgage has been assigned under § 203.438. This forbearance will be in an amount sufficient to assure that during the period of reduced or suspended payments the mortgagor pays no more than 35 percent of net effective income for housing expenses. For this purpose, a mortgagor's net effective income is monthly gross income less city, State, Federal income and Social Security taxes; housing expenses are the sum of the mortgagor's monthly expenses for maintenance, utilities, hazard insurance, and the monthly mortgage payment, including escrowed amounts. This provision shall not prevent a mortgagor from contributing a greater portion of net effective income if the mortgagor submits a written request to do so.

§ 203.647 Period of forbearance assistance.

Forbearance assistance will be terminated on the earliest of the following dates:

(a) Eighteen months after the assignment of the mortgage, except that such period may be extended for an additional period not to exceed 18 months where the Secretary has determined that such extension is necessary to avoid foreclosure and there is a reasonable prospect that the mortgagor will be able to make the payments and repayments specified in § 203.640(a)(4);

(b) The date on which three payments of the mortgagor's portion of the full monthly payment are due and unpaid by the mortgagor, except that forbearance assistance may be continued if the Secretary determines that the default was caused by circumstances beyond the mortgagor's control, and that such extension does not exceed the period provided in paragraph (a) of this section;

(c) The date on which the mortgagor conveys title to the property; or

(d) The date on which the Secretary determines that, because of the mortgagor's financial circumstances—

(1) Forbearance is no longer necessary to avoid foreclosure, or

(2) There is no longer a reasonable prospect that the mortgagor will be able to make the payments and repayments specified in § 203.640(a)(4).

§ 203.648 Periodic review of mortgagor's financial circumstances.

(a) While forbearance assistance is being provided, the mortgagor shall provide information to the Secretary as to occupancy, employment, family composition and income when a review of the payment plan is being undertaken under paragraph (c) of this section, in a form prescribed by the Secretary. When HUD requests such information, it will offer to furnish the mortgagor with referral to a local agency approved by HUD to provide homeownership counseling in connection with this program, or, if there are no such agencies, HUD will offer to provide such counseling directly.

(b) Forbearance shall be terminated if the mortgagor fails to furnish the information required in paragraph (a) of this section within 20 days after the date of the Secretary's request, except that forbearance may be continued if the Secretary determines that the failure to furnish the information was because of circumstances beyond the mortgagor's control.

(c) Payment plans will be reviewed and, if appropriate, restructured by the Secretary in consultation with the mortgagor, under the following circumstances:

(1) Before HUD takes any action because of a mortgagor's monetary default;

(2) Before expiration of the forbearance assistance plan, unless the plan, as extended, already provides for 36 months of assistance;

(3) When a plan is in default for two months or longer; or

(4) When a mortgagor requests review for good cause, or the facts or circumstances that caused HUD to enter into the plan are substantially changed.

[Information collection requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3402) and have been assigned OMB control number 2502–0159.]

§ 203.649 Repayment of forbearance assistance.

(a) Interest continues to accrue on the outstanding principal balance in accordance with the terms of the mortgage. Interest starts to accrue on advances made by HUD on the mortgagor's behalf at the rate specified in the mortgage on the date the advance is made. The amount advanced by HUD as well as the amount due under the original mortgage note, including interest payments due, will be repaid to the Secretary under a payment plan executed in accordance with paragraph (b) of this section.

(b) The payment plan, to be executed by the mortgagor and the Secretary upon termination of the forbearance period, will provide for monthly payments by the mortgagor in an amount determined by the Secretary upon an examination of the mortgagor's financial condition and circumstances, and the mortgagor's ability to contribute to the mortgage payments. However, the repayment amount may not be less than the mortgagor's monthly payment for principal and interest required under the mortgagee note, plus monthly payments for current taxes, hazard insurance, mortgage insurance premiums, assessments, and ground rents.

(c) Repayments must be made by no later than the end of the remaining term of the mortgage, extended, if necessary, by up to 10 years.

(d) The mortgagor shall provide the information required in § 203.648(a) to the Secretary upon termination of forbearance assistance and at such other times as the Secretary may require, on a form prescribed by the Secretary, until the payments on the mortgage are current.

[Information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2502–0159.]

6. 24 CFR Part 203 would be amended by removing the center caption, "Assignment of Mortgages to HUD," appearing before § 203.650 in the existing regulation.

7. Sections 203.650 through 203.654 would be revised to read as follows:

§ 203.650 Preliminary notice to mortgagors.

In all cases except as provided in § 203.606(b), before initiating any action required by law to foreclose the mortgage or, for a mortgage insured under § 203.43h or § 235.50, before taking action under § 203.438 to assign the mortgage to HUD, the mortgagee shall notify the mortgagor in a document approved by the Secretary that the mortgagor is in default, the mortgagee intends to foreclose (or assign, if the mortgage is insured under § 203.43h or § 235.50) unless the mortgagor cures the default, and that the mortgagor may be eligible for assistance from HUD under this Subpart. This notice may not be given before three full monthly payments are due and unpaid.

§ 203.651 Determination by mortgagee.

(a) In any case in which the mortgagee determines that all of the conditions of § 03.640(a) or § 203.645(a), as the case may be, are met, it shall request the Secretary to provide assistance under this Subpart, and the mortgagee shall delay the initiation of foreclosure. In the case of a mortgage insured under § 203.43h of § 235.50, the mortgagee will not make a determination about whether the mortgagor meets all of the conditions of § 203.640 or § 203.645.

(b) Except as provided in § 203.606(b), in any case in which the mortgagee determines that any of the conditions of § 203.640 or § 203.645, as the case may be, is not met, it shall advise the mortgagor that the mortgagor may ask the HUD Field Office Manager, by letter or telephone, to provide assistance in accordance with these regulations. In the case of a mortgage insured under § 203.43h or § 235.50, the mortgagee, without making a determination about whether the mortgagor qualifies for assistance under § 203.640, shall advise the mortgagor that the mortgagor may ask the HUD Field Office to provide assistance in accordance with these regulations. If the mortgagor makes such a request to the HUD Field Office Manager by telephone, it must be made within 20 days after the date of the mortgagee's notice. If such request to HUD is in writing, it must be received within 20 days after the date of the mortgagee's notice.

(c) The mortgagee shall send the notice described in paragraph (a) or (b) of this section in writing in a document approved as to form by the Secretary.

§ 203.652 Preliminary review and determination by Secretary.

(a) Promptly upon receiving a request from the mortgagor for assistance under this Subpart, the Secretary shall notify the mortgagee of the request and the mortgagee shall delay the initiation of foreclosure or, in the case of a mortgage insured under § 203.43h or § 235.50, delay assigning the mortgage. The Secretary shall furnish the mortgagor with a list of local agencies approved by HUD to provide homeownership counseling in connection with this program.

(b) The mortgagee and mortgagor shall promptly furnish to the Secretary all of the information requested to assist in a preliminary determination of whether or not to provide assistance under this Subpart. Information requested of the mortgagor or the mortgagee must be received by the Secretary within 20 days after the date of the Secretary's notice.

(c) After receipt of the required information, the Secretary shall:

(1) Notify the mortgagor and the mortgagee that the mortgagor is not eligible for TMAP or for assignment, and the reasons for such determination; or

(2) Notify the mortgagor and the mortgagee that the mortgagor is eligible for TMAP and the amount and term of the payments that will be provided; or

(3) Notify the mortgagor and the mortgagee that assignment of the mortgage will be accepted under § 203.645 with forbearance under § 203.646, or will be accepted under § 203.438; or

(4) Request that the mortgagee provide additional forbearance to the mortgagor.

(d) The mortgagor may present additonal written information or arguments relating to his or her eligibility for TMAP, or for assignment, or relating to the amount of TMAP, within 20 days after the date of the Secretary's notice provided for under paragraph (c)(1) or (c)(2) of this section. Alternatively, the mortgagor shall be entitled to present such information or argument in person at a conference. A conference may be requested by telephone or in writing if the request is received within 20 days after the date of the Secretary's notice under paragraph (c)(1) or (c)(2) of this section. The conference shall be held in accordance with § 203.653 and must be held within 30 days of the date of the Secretary's notice under paragraphs (c)(1) or (c)(2) of this section.

(Information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2502–0169.)

§ 203.653 Conference.

The conference requested under § 203.652(d) shall be conducted by the Secretary's representative and shall not be an adversary proceeding or subject to formal rules of evidence. The mortgagor may be represented by an attorney or other representative and may call witnesses and present oral and documentary information. However, the Secretary's representative may not compel the attendance of witnesses, or pay the expenses of witnesses called by the mortgagor or the mortgagor's behalf. Cumulative, repetitious or immaterial arguments or materials shall not be presented. The mortgagor shall be permitted, at or before the conference, to examine the material on which the Secretary's preliminary determination is based. The conference shall be held at the HUD office, or a mutually convenient place.

§ 203.654 Final decision.

The Secretary shall promptly advise the mortgagor and the mortgagee of the final decision in writing. If the Secretary determines to approve TMAP or accept an assignment of the mortgage, HUD will offer to furnish the mortgagor with a referral to a local agency approved by HUD to provide homeownership counseling in connection with this program, or, if there are not such agencies, HUD will offer to provide such counseling directly. If the Secretary determines not to approve TMAP, not to accept an assignment of the mortgage under § 203.645, or not to provide forbearance in connection with an assignment under § 203.438, the mortgagor shall be advised of the findings and the specific criteria not met by the mortgagor.

8. A new § 203.655 would be added, to read as follows:

§ 203.655 Foreclosure.

(a) Except as provided in § 203.606(b), the mortgagee shall not initiate foreclosure before the mortgagor has had an opportunity to request the Secretary to provide foreclosure relief under these regulations and to support his or her request as provided in §§ 203.640 through 203.654.

(b) The mortgagee shall accept any TMAP from the Secretary and shall credit the payments to the mortgagor's account.

(c) The mortgagee shall assign the mortgage to the Secretary when directed by the Secretary to do so.

(d) The mortgagee may initiate foreclosure when:

(1) The conditions of § 203.606(b) are met;

(2) The mortgagee does not receive notice from the Secretary, within 25 days from the date of its notice to the mortgagor under § 203.651, that the mortgagor has requested assistance; or

(3) The Secretary advises the mortgagee that it may proceed with foreclosure.

9. Section 203.656 would be revised to read as follows:

§ 203.656 Time limits.

(a) All the time limits provided in §§ 203.640 through 203.655 shall be deemed to be calendar days unless otherwise expressly stated. When the last day for taking the required action falls on a Saturday, Sunday, or legal holiday, the last day for taking such action shall be the next following regular work day.

(b) If a mortgagor fails to take required action within the time limits specified in §§ 203.640 through 203.655, he or she thereby loses his or her right to further consideration for TMAP or for assignment of the mortgage.

§§ 203.658–203.660 [Removed]

10. Sections 203.658 through 203.660 would be removed.

11. Section 203.682 would be revised to read as follows:

§ 203.682 Authority of Field Office Managers.

Field Office Managers shall act for the Secretary in all matters relating to

TMAP and assignment determinations, and occupied conveyance determinations. The decision of the Field Office Manager shall be final and not subject to further administrative review.

12. Section 203.695 would be added to read as follows:.

§ 203.695 Procedural requirements for assignment of mortgages insured under § 203.43h or § 235.50.

(a) *Applicable assignment authority.* The provisions of § 203.645 do not apply to mortgages insured under § 203.43h or § 235.50. See § 203.438 for the authority for assignment of these mortgages.

(b) *Pre-assignment review.* For any mortgage insured under § 203.43h or § 235.50 that a mortgagee plans to assign to HUD under § 203.438, documentation must be submitted to the Commissioner showing that the mortgagee has: (1) Met the requirements of § 203.604; (2) informed the mortgagor that HUD will make information regarding the status and payment history of the mortgagor's loan available to local credit bureaus and prospective creditors; (3) given the mortgagor the notices required under §§ 203.650 and 203.651 and informed the mortgagor of any other available assistance; and (4) provided the mortgagor with the names and addresses of HUD officials to whom further communications may be addressed. Where the mortgagee has not been able to conduct a face-to-face interview, as required under § 203.604, for reasons other than that the property has been abandoned or the mortgagor has notified the mortgagee in writing he or she will not participate, HUD will review such cases on a case-by-case basis to determine whether the requirements of this provision have been met before it will permit assignment of the mortgage. If a mortgagor has applied for assistance under this Subpart, HUD will notify the mortgagee of the application and the mortgagee shall take no action to assign the mortgage under § 203.438 until HUD has determined whether to provide such assistance.

(c) *Notice to mortgagor.* Before initiating any action required by law to assign the mortgage to the Secretary, the mortgagee must provide the mortgagor with the notices required by §§ 203.650, 203.651 and paragraph (b) of this section, in a form approved by the Secretary.

(d) *Obvious inapplicability of assistance.* The Secretary will accept an assignment under § 203.438 without considering whether to provide assistance under this Subpart when

(1) The conditions of § 203.606(b) are met; or

(2) The Secretary does not receive a timely application for assistance under this Subpart.

(e) *Acceptance of TMAP.* If the Secretary determines to provide TMAP, the mortgagee shall accept the temporary mortgage assistance payments and shall credit the payments to the mortgagor's account.

PART 204—COINSURANCE

13. The authority citation for 24 CFR Part 204 is revised to read as set forth below and any authority citation following any section in Part 204 is removed:

Authority: Secs. 244 and 211, National Housing Act, (12 U.S.C. 1715z–9 and 1715b; section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

14. Section 204.400 would be revised to read as follows:

§ 204.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this Chapter concerning the responsibilities of servicers or mortgages insured under section 203(b) of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 203(b) pursuant to the coinsurance authority of section 244 of the National Housing Act, except that § 203.502(a) and §§ 203.640 through 203.656 of this Chapter shall not apply during the period of coinsurance.

Dated: November 27, 1985.

Janet Hale,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 86–23 Filed 1–2–86; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego Regulation 85–17]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is proposing to establish a security zone at Naval Air Station North Island, San Diego, California, consisting of the water area within 100 yards (91.5 meters) of the cruiser pier (berths J–K) and within 300 yards (275 meters) of the carrier pier (quay wall, berths L–P). This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone will be prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Air Station North Island.

DATES: Comments on this regulation must be received on or before February 18, 1986.

ADDRESS: Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are 8:30 AM through 4:00 PM Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain for the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego Docket 85–17) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipts of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting information: The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations: The Commanding Officer, Naval Air Station North Island has requested that Captain of the Port, San Diego, California, establish a security zone at

Naval Air Station North Island Cruiser (J–K) and Carrier (L–P) Piers. This request was made to improve security at those locations and to prevent vessels or persons from approaching closer than 100 yards (91.5 meters) to the cruiser pier (berths J–K) or closer than 300 yards (275 meters) to the carrier pier (berths L–P, quay wall). The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. The Captain of the Port has designated the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Naval Base San Diego, and the Commanding Officer, Naval Air Station North Island, to have concurrent authority to permit entry into this security zone.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Navel vessels. There will be minimal effect on routine navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225, and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1105 is added to read as follows:

§ 165.1105 Security Zone: San Diego Bay, California.

(a) *Location*: The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 yards (91.5 meters) of the Cruiser (J–K) Pier and within 300 yards (275 meters) of the Carrier (L–P) Pier, described as follows:

From a point on the shoreline of Naval Air Station North Island , on North Island, Coronado, California, at latitude 32°42'47.5" N., longitude 117°11'25.0" W., (Point A), for a place of beginning; thence northeasterly to latitute 32°42'52.0" N., longitude 117°11'21.5" W. (Point B); thence southeasterly to latitude 32°42'44.5" N., longitude 117°11'11.0" W. (Point C); thence southerly to latitude 32°42'31.0" N., longitude 117°11'16.4" W. (Point D); thence southeasterly to latitude 32°42'21.4" N., longitude 117°10'44.5" W. (Point E); thence southerly to latitude 32°42'12.8" N., longitude 117°10'47.8" W. (Point F); thense generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning (Point A).

(b) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Air Station North Island. Section 165.33 also contains other general requirements.

Dated: December 24, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–70 Filed 1–2–86; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Diego Regulation 85–19]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is proposing to establish a security zone at Naval Submarine Base, San Diego, California. This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone will be prohibited unless authorized by the Commander, Naval Base San Diego, the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast, or the Captain of the Port.

DATE: Comments on this regulation must be received on or before February 18, 1986.

ADDRESS: Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are 8:30 am through 4:00 pm Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego Docket 85–19) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipts of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation: The Commander, Naval Base San Diego, representing various naval commands in the San Diego area, has requested that the Captain of the Port, San Diego, California establish a security zone at Naval Submarine Base San Diego. This request was made to improve security at that location and to prevent vessels or persons from entering the area of the Submarine Base. The Captain of the Port concurs with the need for this security zone. The security zone is needed to

protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. The Captain of the Port has designated the Commander, Naval Base San Diego and the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast, as having concurrent authority to permit entry into this security zone.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation: In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5

2. In Part 165, a new § 165.1104 is added, to read as follows:

§ 165.1104 Security Zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone: The water area adjacent to Naval Submarine Base, San Diego, California, described as follows:

Commencing at a point on the shoreline of Ballast Point, at latitute 32°41'11.0" N., longitude 117°13'55.3" W. (Point A), for a place of beginning; thence northerly (approximately 346 °T) to latitute 32°41'35.0" N., longitude 117°13'59.6" W. (Point B); thence westerly (approximately 243 °T) to latitude 32°41'27.0" N., longitude 117°14'19.0" W. (Point C); thence generally southeasterly along the shoreline of the Naval Submarine Base to the place of beginning (Point A).

(b) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast. Section 165.33 also contains other general requirements.

Dated: December 24, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86-69 Filed 1-2-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Diego Regulation 85-20]

Security Zone Regulations; San Diego Bay, California, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is proposing to establish a security zone at Naval Ocean Systems Center and Naval Supply Center, San Diego, California. This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone will be prohibited unless authorized by the Captain of the Port, the Commander, Naval Base, San Diego, the Commander, Naval Ocean Systems Center, San Diego, or the Commanding Officer, Naval Supply Center, San Diego.

DATES: Comments on this regulation must be received on or before February 18, 1986.

ADDRESS: Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are 8:30 AM through 4:00 PM Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego Docket 85-20) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipts of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation: The Commander, Naval Base San Diego, representing various naval commands in the San Diego area, has requested that the Captain of the Port, San Diego, California establish a security zone at Naval Ocean Systems Center, San Diego and the Naval Supply Center, San Diego. This request was made to improve security at those locations and to prevent vessels or persons from entering the area of the Naval Ocean Systems Center or the Naval Supply Center. The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. The Captain of the Port has designated the Commander, Naval Base San Diego, the Commander, Naval Ocean Systems Center, San Diego, or the Commanding Officer, Naval Supply Center, San Diego, as having concurrent authority to permit entry into this security zone.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on

Federal Reglation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation: In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1103 is added, to read as follows:

§ 165.1103 Security Zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone:

The water area adjacent to the Naval Ocean Systems Center, San Diego, California, and the Naval Supply Center, San Diego, California, described as follows:

Commencing at a point on the shoreline of Point Loma, at latitude 32°41'57.8" N, longitude 117°14'17.5" W, (Point A), for a place of beginning; thence easterly to latitude 32°41'56.0" N, longitude 117°14'09.9" W. (Point B); thence northeasterly to latitude 30°42'03.8" N, longitude 117°14'04.7" W. (Point C); thence northeasterly to latitude 32°42'10.2" N, longitude 117°14'00.6" W. (Point D); thence northwesterly to latitude 32°42'14.6" N, longitude 117°14'02.1" W. (Point E); thence northwesterly to latitude 32°42'22.7" N, longitude 117°14'05.8" W. (Point F); thence northwesterly to latitude 32°42'28.3" N, longitude 117°14'08.4" W. (Point G); thence westerly to latitude 32°42'28.3" N, longitude 117°14'09.6" W. (Point H); thence generally southerly along the shoreline of Point Loma to the Place of beginning (Point A).

(b) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base, San Diego, the Commander, Naval Ocean Systems Center, San Diego, or the Commanding Officer, Naval Supply Center, San Diego. Section 165.33 also contains other general requirements.

Dated: December 24, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–68 Filed 1–2–86; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Diego Regulations 85–21]

Security Zone Regulations; San Diego Bay, California, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is proposing to establish a security zone at Naval Station, San Diego, California. This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone will be prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego.

DATE: Comments on this regulation must be received on or before February 18, 1986.

ADDRESS: Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are 8:30 AM through 4:00 PM Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: Intersted persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identiy this notice (COTP San Diego Docket 85–21) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipts of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and is is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations: The Commander, Naval Base San Diego, representing various naval commands in the San Diego area, has requested that the Captain of the Port, San Diego, California establish a security zone at Naval Station, San Diego. This request was made to improve security at that location and to prevent vessels or persons from entering the area of the Naval Station. The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States.The Captain of the Port has designated the Commander, Naval Base San Diego and the Commanding Officer, Naval Station, San Diego as having concurrent authority to permit entry into this security zone.

This regulations is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation / regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulation: In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1102 is added, to read as follows:

§ 165.1102 Security Zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone: The water area within Naval Station, San Diego, California, described as follows:

Commencing at a point at the mount of Chollas Creek, at latitude 32°41'12.5" N., longitude 117°07'57.0" W. (Point A), for a place of beginning; thence southwesterly to a point on the U.S. Pierhead Line 100 yards (92 meters) northwest of the head of Pier 1, at latitude 32°41'05.8" N., longitude 117°08'05.6" W. (Point B); thence southeasterly along the U.S. Pierhead Line to the south side of Pier 13 (Point C); thence northeasterly along the south side of Pier 13 to the shoreline of the Naval Station (Point D); thence generally northwesterly along the shoreline of the Naval Station to the place of beginning (Point A).

(b) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego. Section 165.33 also contains other general requirements.

Dated: December 24, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–67 Filed 1–2–86; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP San Diego Regulation 85–23]

Security Zone Regulations; Pacific Ocean off Mission Beach, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is proposing to establish a security zone around the Naval Ocean Systems Center (NOSC) Research Tower located approximately 0.9 mile off Mission Beach, San Diego, California. This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone will be prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Naval Ocean Systems Center, San Diego.

DATE: Comments on this regulation must be received on or before February 18, 1986.

ADDRESS: Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are 8:30 AM through 4:00 PM, Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego Docket 85–23) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipts of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting information

The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Commander, Naval Base San Diego, representing various naval commands in the San Diego area, has requested that the Captain of the Port, San Diego, California establish a security zone around the Naval Ocean Systems Center Research Tower (Light List Number 6), approximately 0.9 mile off Mission Beach, San Diego, California in position latitude 32°46.4' N, longitude 117°16.1' W. The area requested for this security zone consists of the water area within 100 yards (29 meters) of the research tower. This request was made to improve security at that location and to prevent vessels or persons from approaching the research tower and interfering with equipment in place there. The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interest of the United States. The Captain of the Port has designated the Commander, Naval Base San Diego and the Commander, Naval Ocean Systems Center, San Diego, as having concurrent authority to permit entry into this security zone.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact on this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will

not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors; Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g). 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1101 is added, to read as follows:

§ 165.1101 Security Zone: Pacific Ocean off Mission Beach, San Diego, California.

(a) *Location:* The following area is a security zone: The water area within 100 yards (92 meters) of the Naval Ocean Systems Center Research Tower (Light List Number 6) located approximately 0.9 miles off Mission Beach, San Diego, California at latitude 323° 46.4' N, longitude 117° 16.1' W.

(b) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captainof the Port, the Commander, Naval Base, San Diego, or the Commander, Naval Ocean Systems Center, San Diego. Section 165.33 also contains other general requirements.

Dated: December 24, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–73 Filed 1–2–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3139/P375; PH-FRL 2925–3]

Pesticide Tolerance for Hexakis[2-Methyl-2-Phenylpropyl] Distannoxane

Correction

In FR Doc. 85–27519 beginning on page 47761 in the issue of Wednesday, November 20, 1985, make the following corrections:

1. On page 47762, in the first column, in the fourth line from the bottom of the page, "phenylproply" should read "phenylpropyl".

2. On the same page, in the second column, in the third line of the second complete paragraph, "0.5" should read "5.0".

BILLING CODE 1505–01–M

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

[SWH-FRL 2949–4]

Hazardous Waste Management System; Land Disposal Restrictions and Organic Toxicity Characteristic

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Hearings.

SUMMARY: EPA plans to hold a series of public hearings to explain and take comment on rulemakings soon to be proposed in response to the Hazardous and Solid Waste Amendments of 1984 related to land disposal restrictions.

The soon-to-be-proposed regulations will propose procedures to establish treatment standards for hazardous waste, to grant nationwide variances from statutory effective dates, to grant extensions of effective dates on a case-by-case basis, and procedures by which EPA will evaluate petitions demonstrating that continued land disposal is protective of human health and the environment. In addition, EPA will propose treatment standards and effective dates for the first classes of hazardous wastes to be evaluated under this framework; certain dioxin-containing hazardous waste and solvent-containing hazardous waste. The proposal also will establish the framework under which it expects to evaluate all hazardous wastes in accordance with the schedule (when issued as a final rule) that was proposed, as published in the **Federal Register** of May 31, 1985 (50 FR 23250). Details of this proposal will be provided in its publication in the **Federal Register.**

The Agency will conduct these public hearings to provide additional explanations to the public and to receive their comments on these proposals.

DATES: The public hearings are scheduled as follows:

1. February 4 & 5, 1986, 9:00 a.m. to 4:30 p.m., Dallas, Texas.

2. February 6 & 7, 1986, 9:00 a.m. to 4:30 p.m., Washington, DC.

3. February 10 & 11, 1986, 9:00 a.m. to 4:30 p.m., Chicago, Illinois.

The meetings may be adjourned earlier if there are no remaining comments.

ADDRESSES: The public hearings will be held at the following locations.

1. The Lincoln Hotel/Dallas, 5410 LBJ Freeway, Lincoln Center, Dallas, Texas 75240, (214) 934–8400 (toll free for reservations 800–228–0808).

2. Department of Health and Human Services, North Auditorium, 330 Independence Avenue, SW., Washington, DC.

3. Sheraton International at O'Hare, 6810 North Mannheim Road, Rosemont, Illinois 60018.

Make lodging reservation directly with the hotels; a block of rooms has been reserved for the convenience of attendees requiring lodging.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or at (202) 382–3000. For technical information contact Ms. Geraldine Wyer, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–9388.

Dated: December 30, 1985.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86–104 Filed 1–2–86; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1248

[No. 38797]

Revision to Quarterly and Annual Report of Freight Commodity Statistics for Class I Railroads (Form QCS)

AGENCY: Interstate Commerce Commission.

ACTION: Termination of rulemaking.

SUMMARY: The Interstate Commerce Commission is terminating this rulemaking, which proposed to revise the Quarterly and Annual Report of Freight Commodity Statistics (Form QCS). The proposed rule would have reduced the number of reportable commodity codes from 464 to 128. The report form will continue in effect as currently prescribed.

DATE: This action is effective immediately upon service of this order.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275–7510.

SUPPLEMENTARY INFORMATION:

Background

On June 17, 1982, the Commission served a Notice of Proposed Rulemaking

on a Revision to the Quarterly and Annual Report of Freight Commodity Statistics for Class I Railroads (Form QCS) (47 FR 26870, June 22, 1982). This notice proposed an abbreviated Form QCS that would satisfy Commission costing objectives while minimizing future carrier reporting efforts. The proposed rule would have revised Form QCS to include only 128 commodity codes instead of the 464 that are currently prescribed.

Responses

Three respondents filed comments to this Notice: the United States Railway Association (USRA), the Association of American Railroads (AAR), and the American Paper Institute, Inc. (API).

Both API, a shipper organization, and USRA maintain that the present QCS meets the needs of the public. AAR and USRA assert that the current QCS satisfies regulatory needs.

All respondents questioned the cost/benefit of the revised Form QCS. Specifically, the AAR believes the change in commodity groupings would increase its data processing costs, and API states that no economic savings can occur since the railroads already have computerized the present Form QCS.

Termination of Rulemaking

All three respondents state that the present Form QCS meets the needs of the Commission and the public, and that the proposed change would increase data processing costs which would offset any potential savings from reporting fewer commodity codes.

The proposed rule is consistent with both the Commission's Policy Statement on Financial and Statistical Reporting (44 FR 27537) and the Paperwork Reduction Act of 1980 because it would have limited data collection to only those items regularly and frequently used in the Commission's regulatory process. However, the record in this proceeding demonstrates that the proposed reduction in data elements would have actually increased costs. Because there is no cost benefit in this proposed revision, we have concluded that no change should be made to the present reporting requirements.

Therefore, the current reporting format for Form QCS will be retained and this proceeding is terminated.

Regulatory Flexibility Act

The Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule directly affects only Class I railroads having annual operating revenues of $50 million or more.

This action does not significantly affect the quality of the human environment or the conservation of energy resources.

The information collection requirements contained in this proposal have been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments on any paperwork burden to OMB by addressing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20503.

List of Subjects in 49 CFR Part 1248

Freight, Railroads, Reporting requirements, Statistics.

This action is taken under authority of 5 U.S.C. 553 and 49 U.S.C. 10321.

Dated: December 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 86-95 Filed 1-2-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of Proposed Rule To List the Trispot Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Service is withdrawing the rule published in the **Federal Register** of July 13, 1984 (49 FR 28572), that proposed the trispot darter (*Etheostoma trisella*) to be an endangered species with critical habitat. New data indicate that species is more widespread and less threatened than was known at the time of the proposed rule. Presently, the species is not considered likely to become endangered in the foreseeable future.

DATES: The withdrawal is effective January 3, 1986.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins at the Endangered Species Field Station, U.S. Fish and Wildlife Sevice, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Based on recently gathered data and existing information on the distribution and status of the trispot darter (*Etheostoma trisella*), the Service is withdrawing the proposed rule to list the trispot darter as an endangered species with critical habitat. The trispot darter was one of 29 fish species included in a March 18, 1975, Notice of Review published by the Service in the **Federal Register** (40 FR 12297). On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that the trispot darter, along with 146 other fish species, was being considered for possible addition to the List of Endangered and Threatened Wildlife. On November 4, 1983, the Service published a notice in the **Federal Register** (48 FR 50909) that a status review was being conducted specifically for the trispot darter to determine if this fish species and any habitat critical to its continued existence should be protected under the Endangered Species Act of 1973, as amended. The trispot darter, with critical habitat, was proposed for Endangered Species Act protection, along with the amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*), in the **Federal Register** (49 FR 28572) on July 13, 1984. In the September 28, 1984, **Federal Register** (49 FR 38320) the Service announced that a public hearing would be held October 16, 1984, and that the public comment period on the proposed rule would be extended to October 26, 1984.

A total of 15 written comments was received in response to the proposed rule. The U.S. Army Corps of Engineers provided data on a proposed multi-purpose lake project on the Conasauga River and its potential impacts on the species. Dalton Utilities, Dalton-Whitfield Chamber of Commerce, and two individuals commented that they believed the multi-purpose lake was necessary for the economic growth of the area. The U.S. Nuclear Regulatory Commission provided no additional information on the species and was not aware of any projects that might be impacted. The Federal Highway Administration commented that listing

the species may impact its projects. The U.S. Forest Service, Tennessee Department of Conservation, and three individuals supported the proposed rule. One individual commented that the species was present in other streams, but when questioned in person was unable to provide any specific data.

The amber darter and Conasauga logperch and their critical habitats, proposed concurrently with the trispot darter, were provided Endangered Species Act protection on August 5, 1985 (50 FR 31597). However, as described in the final rule for the amber darter and Conasauga logperch, the decision on the trispot darter was delayed under provisions of the Act found at section 4(b)(6). These provisions allow for a delay in the determination of a proposed species' status for up to six months past the Act's one-year deadline for finalizing proposed rules if there is substantial disagreement regarding the sufficiency or accuracy of available data relating to the determination.

The trispot darter was known from two populations (Freeman 1983) when it was proposed for endangered species status. Subsequent to the proposal (fall 1984), the Georgia Department of Natural Resources (GDNR) located two additional populations and found the species further downstream in the Conasauga River than was previously known. One of the newly discovered populations was in Holly Creek, a tributary of the Conasauga River, in Murray County, Georgia. The other population was loacted in the Coosawattee River, a Conasauga River tributary in Gordon County, Georgia. Based on these data, the Service believed, at the time the proposed rule for the amber darter and Conasauga logperch was finalized, that the trispot darter might still qualify for threatened status. However, the Service also believed this one information created substantial disagreement regarding the sufficiency of available data on which to make a final determination of the species status. The Service therefore extended the deadline for the determination of the trispot darter's status by six months, from July 13, 1985, to January 13, 1986. During this time extension the Service funded an additional survey to assist making the determination on the trispot darter's status.

The additional trispot darter survey has been completed (Freemen 1985), and five trispot populations are now known to exist. Specifically, the species is known the following areas:

1. The Conasauga River contains the largest known population. At the time the species was proposed, it was know to inhabit about 38 river miles from Polk and Bradley Counties, Tennessee, Downstream through Murray and Whitfied Counties, Georgia. The species has now been taken about 12 miles downstream of this river section. This finding places the fish below the sewage effluent of Dalton, Georgia, indicating that the species likely exists even further downstream in the Conasauga River, as water quality conditions improve somewhat below this point.

2. The Coahulla Creek population (isolated from the Conasauga River by an impoundment) was the only other population known when the species was proposed. This population exists in about 8.5 miles of the creek within a rural area of Bradley County, Tennessee, and Whitfied County, Georgia.

3. The population in Holly Creek (Murry County, Georgia) covers at least 7.5 creek miles. The headwaters of Holly Creek are within National Forest lands, and the lower creek section, where the fish exists, is rural but somewhat impacted by carpet mill development. This population, which is also isolated from the Conasauga River by a small impoundment, was discovered by GDNR subsequent to the proposal, and its continued existence was confirmed by Freeman (1985

4. Trispot darters were found at one site in the Coosawattee River (Gordon County, Georgia) during a GDNR fish sampling project. Freman (1985) sampled Coosawattee River tributaries and found the fish in three small tributaries (Noblet Creek, Dry Creek, and an unnamed Creek) 1 to 9 miles GDNR's Coosawattee River collection site. Freeman (1985) did not conduct further surveys in the main item of the Coosawattee River. However, as the river from the site where GDNR collected the specimens (this was the only site in the river they sampled) downstream to the confluence with the Conasauga River contains similar habitat and water quality, it is likely the fish exists over a larger area within this river. The Coosawattee River basin within this area is rural and not extensively developed.

5. Freeman (1985) found a popultion near the mouth of Johns Creek, a tributary of the Oostanaula River (Gordon and Floyd Counties, Geogia). Freeman did not sample the Oostanaula River (the river is large and was not included in the scope of the survey), but as the Johns Creek population is located near the Oostanaula River and the river's quality and habitat seem adequate, Freeman (1985) suggests that the trispot darter may also inhabit the Oostanaula. The Johns Creek area is rural and is dotted by many springs and spring seeps.

The new information presented by Freeman (1985) on the collection of the trispot darter specimens in small streams (10 to 20 feet wide) during the summer non-breeding season months, suggests that the species is not restricted to large rivers and streams as was believed at the time the species was proposed. Freeman (1985) suggests "that the trispot darter may utilize a broader range of streams." He further states that "Many small, flat-gradient streams (and abundance of springs) exist in the population areas and may themselves harbor populations of *Etheostoma trisella*."

When the trispot darter was known from only two populations, any factors that significantly altered the species' habitat quality could have been considered to jeopardize its continued existence. However, five populations are now known to exist, and the data suggest the species is more widespread. Furthermore, most of the habitat occupied by these populations is in stable rural areas that are not experiencing rapid development. A review of this biological information, as outlined in this notice, has convinced the Service that the trispot darter does not warrant protection under the Endangered Species Act. If new information becomes available to indicate that the trispot darter is likely to become an endangered species or extinct within the foreseeable future, the Service will again propose the species for Endangered Species Act protection.

Finding and Withdrawal

In compliance with section 4(b)(6)(A)(i)(IV) and 4(b)(6)(B)(ii) of the 1973 Endangered Species Act, as amended, the Service hereby withdraws its proposed rule of July 13, 1984 (49 FR 28572), to list the trispot darter (*Etheostoma trisella)* as an endangered species with critical habitat. At least five populations of the species are presently known to exist, whereas only two were known at the time of the proposed rule. Also, because of this wider distribution, the threats to the species are not as great or as imminent as previously believed.

Literature Cited

Freeman, B.J. 1983. Final report on the status of the trispot darter (*Etheostoma trisella)* and the amber darter (*Percina antesella*) in the upper Coosa River system in Alabama, Georgia, and Tennessee. U.S. Fish and Wildlife Service Contract No. 14–16–0004–048. 112 pp.

Freeman B.J. 1985. Final report on the status of the trispot darter (*Etheostoma*

trisella) in the upper Coosa River system in Alabama, Georgia, and Tennessee. U.S. Fish and Wildlife Service Unit Cooperative Agreement No. 14-16-0009-1551. 9 pp.

Author

The primary author of this notice is Richard G. Biggins, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

Authority

The authority for this action continues to read:

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*, Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 26, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-106 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 51190-5190]

Northeast Multispecies Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects information in the preamble of the proposed rule for the Northeast Multispecies Fishery that was published December 3, 1985, 50 FR 49582.

FOR FURTHER INFORMATION CONTACT: William B. Jackson, Fisheries Management Specialist, 634-7432.

The following corrections are made in FR Doc. 85-28721 appearing on page 49582 in the issue of December 3, 1985:

1. In column 1 under the **"ADDRESS"** heading, the first sentence is corrected to read "Comments on the proposed rule, the FMP, and the draft regulatory impact review should be sent to Mr. Richard Schaefer, Acting Regional Director, National Marine Fisheries Service . . ."

2. In column 2 the first sentence is corrected by removing "the final environmental impact statement" from lines 1 and 2.

Dated: December 27, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-17 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 2
Friday, January 3, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 27, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn.: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

● *Farmers Home Administration*

7 CFR 1945-A, Disaster Assistance (General)
On occasion
State or local governments; Businesses or other for-profit; 4,205 responses; 2,785 hours; not applicable under 3504(h)
Jim Crysler, (202) 382-1657

● *Farmers Home Administration*

Request for Verification of Employment
FmHA 1910-5
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 812,500 responses; 203,125 hours; not applicable under 3504(h)
Dale Alling, (202) 382-0099

New

● *Rural Electrification Administration*

Construction Work Plans and Long Range System Engineering Plans
On occasion
Small business or organization; 545 responses; 562,500 hours; not applicable under 3504(h)
Archie Cain, (202) 382-9082

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 86-83 Filed 1-2-86; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, and interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than January 31, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January , for the following periods:

	Period
Antidumping duty proceeding	
Cell-Site Transceivers from Japan	1/01/85-12/31/85
Anhydrous Sodium Metasilicate from France	1/01/85-12/31/85
Expanded Metal from Japan	1/01/85-12/31/85
Calcium Pantothenate from Japan	1/01/85-12/31/85
Potassium Permanganate from Spain	1/01/85-12/31/85
Potassium Permanganate from the People's Republic of China	1/01/85-12/31/85
Truck Trailer Axles from Hungary	1/01/85-12/31/85
Countervailing duty proceeding	
Non-Rubber Footwear from Argentina	1/01/85-12/31/85
Fabricated Automotive Glass from Mexico	11/01/84-12/31/85
Semifinished Forged Undercarriage Components from Italy	1/01/85-12/31/85
Stainless Steel Wire Rod from Spain	1/01/85-12/31/85
Carbon Steel Wire Rod from Trinidad and Tobago	1/01/85-12/31/85
Roses and Other Cut Flowers from Colombia	1/01/85-12/31/85

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Five copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-009, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by January 31, 1986.

If the Department does not receive by January 31, 1986, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties

required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 26, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-19 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-502]

Postponement of Final Antidumping Duty Determination; Nylon Impression Fabric from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in this investigation to postpone the final determination, as permitted in section 735(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(B)). Based on this request, we are postponing our final determination as to whether sales of nylon impression fabric from Japan have occured at less than fair value until not later than April 21, 1986.

EFFECTIVE DATE: January 3, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson or Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288 or 377-3963.

SUPPLEMENTARY INFORMATION: On July 1, 1985, we published a notice in the **Federal Register** (50 FR 28111) that we were initiating, under section 732(b) of the Act, (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether nylon impression fabric from Japan was being, or was likely to be, sold at less than fair value. On July 25, 1985, the International Trade Commission determined that there is a reasonable indication that imports of nylon impression fabric are materially injuring a U.S. industry (50 FR 31053). On December 6, 1985, we published a preliminary determination of sales at not less than fair value with respect to this merchandise (50 FR 49976). The notice stated that if the investigation proceeded normally, we would make our final determination by February 1, 1986.

Pursuant to section 735(a)(2)(B) of the Act, the petitioners requested an extension of the final determination date until not later than 135 days after the date of publication of the preliminary determination. If petitioners properly request an extension after a negative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are granting the request and postponing our final determination until not later than April 21, 1986.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m., on March 11, 1986, at the U.S. Department of Commerce, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 4, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.38, within 30 days of publication of this notice, at the above address in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 19, 1985.

[FR Doc. 86-24 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-503]

Postponement of Final Antidumping Duty Determination; 64K Dynamic Random Access Memory Components (64K DRAMs) From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from all of the respondents in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on these requests, we are postponing our final determination as to whether sales of 64K DRAMs from Japan have occurred at less than fair value until not later than April 23, 1986.

EFFECTIVE DATE: January 3, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Paul Tambakis, or Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3965, 377-4136, or 377-3963.

SUPPLEMENTARY INFORMATION: On July 19, 1985, we published a notice in the **Federal Register** (50 FR 29458) that we were initiating, under section 732(b) of the Act, (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether 64K DRAMs from Japan were being, or were likely to be, sold at less than fair value. On August 8, 1985, the International Trade Commission determined that there is a reasonable indication that imports of 64K DRAMs are materially injuring a U.S. industry. On December 9, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 32758). The notice stated that if the investigation proceeded normally, we would make our final determination by February 17, 1986.

Pursuant to section 735(a)(2)(A) of the Act, all of the respondents in this investigation requested an extension of the final determination date until not later than 135 days after the date of publication of the preliminary determination. The respondents are qualified to make such a request because they account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are requested, absent compelling reasons to the contrary, to grant the requests. Accordingly, we are granting the requests and postponing our final determination until not later than April 23, 1986.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m., on March 10, 1986, at the U.S. Department of Commerce, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 3, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 17, 1985.

[FR Doc. 86-25 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-489-501]

Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Preliminary Determinations of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain welded carbon steel pipe and tube products from Turkey are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determinations. If these investigations proceed normally, we will make our final determinations by March 10, 1986.

EFFECTIVE DATE: January 3, 1986.

FOR FURTHER INFORMATION CONTACT: William D. Kane or Charles E. Wilson, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1766 or (202) 377-5288.

Preliminary Determination

We have preliminarily determined that certain welded carbon steel pipe and tube products from Turkey are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We investigated three companies representing virtually all exports of the subject merchandise during the period of investigation.

Case History

On July 16, 1985, we received a petition from the Standard Pipe and Tube Subcommittee and the Line Pipe Subcommittee of the Committee on Pipe and Tube Imports. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of certain welded carbon steel pipe and tube products from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threatening material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping duty investigations. We notified the ITC of our action and initiated such investigations on August 5, 1985 (50 FR 32246). On September 5, 1985, we presented questionnaires to Mannesmann-Sumerbank Boru Industrisi (Mannesmann), Borusan Ithicat ve Dagitim (Borusan), and Erkboru Profil Sanayi ve Ticaret (Erkboru). On September 11, 1985, the ITC determined that there is a reasonable indication that imports of certain welded carbon steel pipe and tube products from Turkey are materially injuring a United States industry (50 FR 37068). We received responses from all three companies on October 21, 1985. On November 5 and 6, 1985, we requested further information from the three companies in areas where we considered their responses deficient. Further response were received from the three companies during November 1985. On November 26, 1985, the petitioners alleged that home market and third country sales of the respondents were at prices below the cost of producing that merchandise. Based on the information contained in the petitioners allegation of sales at less than cost, we will institute a cost investigation prior to our verification and final determination.

Products Under Investigation

The products covered by these investigations are: (1) Welded carbon steel pipe and tube products with an outside diameter of .375 inch or more but not over 16 inches of any wall thickness, currently classified in the Tariff Schedules of the United States, Annotated (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A-120, A-53, or A-135; and, (2) welded carbon steel line pipe with an outside diameter of .375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classified in the TSUSA under items 610.3208 and 610.3209. These products are produced to various API specifications for line pipe, most notably API-5L or API-5LX.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act, because adequate responses were not submitted in an acceptable form.

United States Price

For purposes of our preliminary determinations we have not used sales data presented by respondents to calculate United States price, since we do not have clarification regarding contract terms and sales dates. We calculated the purchase price of standard pipe and tube and line pipe as provided in section 772(b) of the Act, on the basis of the average F.O.B. packed values for the six month period of investigation as derived from the IM 146 statistics compiled by the Bureau of Census. We used these data as the best information available instead of the IM 145 statistics (for narrower periods) which were used in the petition.

Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value. One respondent failed to provide a listing of

home market sales. All of the respondents failed to provide cost data for differences in merchandise which were necessary for accurate comparisons. One respondent provided sales prices in one market based on theoretical weight prices, and in the other market based on actual weight prices. Therefore, we have used constructed value information provided in the petition, updated by more recent data submitted by both petitioners and respondents, as the best information available, pursuant to section 776(b) of the Act.

Critical Circumstances Determination

Petitioners have alleged that imports of certain welded carbon steel pipe and tube products from Turkey present "critical circumstances" within the meaning of section 773(e)(1) of the Act. Critical circumstances exist when the Department has reasonable basis to believe or suspect that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2)(a) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

We have considered standard pipe and tube and line pipe separately. For both products imports have been increasing steadily over the past three years. For standard pipe and tube a surge in imports can be seen from the period immediately prior to the filing of the petition to the period following the filing. However, considering the absolute quantities imported, we do not consider them to be massive imports over a relatively short period. Therefore, we have preliminarily determined that critical circumstances do not exist with regard to either standard pipe and tube or line pipe.

Verification

In accordance with section 776(a) of the Act, we will verify the information provided by the respondents by using standard verification procedures, including examination of relevant sales, financial and cost records of the companies.

Suspension of Liquidation

In accordance with section 773(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain welded carbon steel pipe and tube products from Turkey. Liquidation shall be suspended as of the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of this merchandise subject to the investigation exceeds the United States price. In the case of standard pipe and tube that amount is 12.78 percent. In the case of line pipe that amount is 32.55 percent. This suspension of liquidation will remain in effect until further notice.

ITC Determination

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on January 31, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 24, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 23, 1985.

[FR Doc. 86-26 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

Carnegie-Mellon University and Children's Hospital Corp; Consolidated Decision on Applications for Duty-Free Entry of an X-Ray Generator

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th & Constitution Avenue, NW. Washington, DC.

Docket Number: 85-181. Applicant: Carnegie-Mellon University, Pittsburgh, PA 15213. Intended use: See notice at 50 FR 24553.

Docket Number: 85-182. Applicant: Children's Hospital Corporation, Boston MA 02115. Intended use: See notice at 50 FR 26395.

Article: X-Ray Generator. Manufacturer: Marconi-Avionics Limited, United Kingdom. Advice Submitted By: National Institutes of Health: September 10, 1985.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. Reasons: Each foreign instrument to which the foregoing applications relate provides high beam energy over a small focal spot (1.2 kilowatts for 0.1 by 1.0 millimeters). The National Institutes of Health advises in its respectively cited memoranda that (1) the capability of each of the foreign instruments described above is pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is equivalent scientific value to any of the foreign instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Stautory Import Programs Staff.

[FR Doc. 86-56 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

Baylor College of Medicine et al; Consolidated Decision on Applications for Duty-Free Entry of Circular Dichroism Spectropolarimeters

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th & Constitution Avenue, NW. Washington, DC.

Docket Number: 85-194. Applicant: Baylor College of Medicine, Houston,

TX 77030. Intended Use: See notice at 50 FR 26395.

Docket Number: 85-239. Applicant: Polytechnic Institute of New York, Brooklyn, NY 11201. Intended Use: See notice at 50 FR 32756.

Docket Number: 85-240. Applicant: American Red Cross, Bethesda, MD 20814. Intended Use: See notice at 50 FR 32756.

Instrument: Spectropolarimeter. Manufacturer: Japan Spectroscopic Company Limited, Japan. Advice Submitted By: National Institute of Health: September 24, 1985.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. Reasons: Each foreign instrument to which the foregoing applications relate provides measurement of circular dichroism spectra and high frequency switching (50 000 times per second) between left- and right-circularly polarized light. The National Institutes of Health advises in its respectively cited memoranda that (1) the capability of each of the foreign instruments described above is pertitent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-57 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

December 30, 1985.

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on Janaury 8, 1986, 10:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c) (1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-49 Filed 1-2-86 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

December 30, 1985.

A meeting of the Management-Labor Textile Advisory Committee will be held January 9, 1986 at 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials on problems and conditions in the textile and apparel industry).

General Session: 1:30 p.m. Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-50 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DR-M

North Dakota State Soil Conservation Committee et al.; for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-208R. Applicant: North Dakota State Soil Conservation Committee, State Highway Building, Capitol Grounds, Room 213, Bismarck, ND 58505. Instrument: Electromagnetic Ground Conductivity Meter, Model EM-38 and Accessories. Original notice of this resubmitted application was published in the **Federal Register** of July 9, 1985.

Docket Number: 86-029. Applicant: Rush Presbyterian St. Luke's Medical Center, 1753 W. Congress Parkway, Chicago, IL 60612. Instrument: Extracorporeal Shock Wave Lithotripter. Manufacturer: Dornier System GmbH, West Germany. Intended Use: The instrument will be used in a program to (1) further explore the potential of extracorporeal shock wave lithotripter therapy, (2) develop criteria for its use, (3) compare its effectiveness (including costs) against other modalities of therapy, and (4) train physicians and paramedical personnel in its operation and utilization. Application Received by Commissioner of Customs: November 1, 1985.

Docket Number: 86-052. Applicant: Beckman Research Institute of the City of Hope Medical Center, 1500 East Duarte Road, Duarte, CA 91010. Instrument: Electron Microscope, Model

CM 10 and Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument is intended to be used for research studies of the fundamental problems in developmental biology and neuroscience. The research projects will include:

(1) Immunoelectron microscopic examination of the cell surface distribution of developmentally restricted membrane glycoproteins.

(2) Investigation of the subcellular distribution of putative synapse-specific proteins.

(3) Electron microscopic studies to determine how coated vesicles participate in the delivery of proteins.

(4) Synaptic vesicle formation monitored by electron microscopy correlated with synpatic transmission in a temperature-sensitive choline acetyltransferase mutant of *Drosophila.*

(5) Determination of the changes in the distribution of calmodulin and calmodulin binding proteins during induction of long-term potentiation.

(6) Enhancement of the study of synaptogensis and dendritic branching in developing spinal cord.

Application Received by Commissioner of Customs: November 20, 1985.

Docket Number: 86-056. Applicant: SRI International, 333 Ravenswood Avenue, Menlo Park, CA 94025. Instrument: CO_2 Laser, Model #5822. Manufacturer: Ultra Lasertech, Canada. Intended Use: The instrument is intended to be used for studies of mineral components of dusts, specifically kaolin, montmorillonite, illite, limestone, colemanite, and kernite. The purpose of the investigations are:

(1) To establish an empirical data base of CO_2 laser backscatter signatures for different compositions, sizes, and shapes of dust minerals.

(2) To test the accuracy in calculating infrared properties of aerosols by comparing measurements with spherical particle theory using available optical constants of the bulk materials, and

(3) To investigate the feasibility of determining the chemical composition of the major species of aerosols in mixtures by use of infrared scattering data.

Application Received by Commissioner of Customs: November 21, 1985.

Docket Number: 86-057. Applicant: Michigan State University, Department of Biochemistry, Wilson Road, East Lansing, MI 48824-1319. Instrument: Mass Spectrometer System, JMS-HX110HF. Manufacturer: JEOL, Limited, Japan. Intended Use: The instrument is intended to be used for studies of biopolymers of amino acids (peptides) and sugars (polysaccharides, glycoproteins, and glycolipids) as well as monomers of steroids, organic acids, and terpenoids of biological origin. The objectives pursued in the course of the investigations include:

(1) Protein characterization and manipulation.

(2) Structural characterization of oligosaccharides.

(3) Complex mixture analysis.

(4) Structural elucidation of metabolites/hormones in plants.

The instrument will also be used for educational purposes in the courses: Chemistry 924, Biochemistry 960, Bichemistry 899 and Chemistry 899 and Biochemistry 999 and Chemistry 999.

(Catalog of Federal Domestic Assistance Program No. 11.105, Inportation of Duty-Free Education and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-53 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Lawrence Livermore National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 83-340. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: Streak Camera, Model C1370/System III with Options. Manufacturer: Hamamatsu Corporation, Japan. Intended Use: See notice at 48 FR 52619.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a time resolution of better than 2 picoseconds and a photocathode quantum efficiency > 0.7 percent. The National Bureau of Standards advises in its memorandum dated January 24, 1984 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-54 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-187. Applicant: University of Minnesota, Minneapolis, MN 55455. Instrument: Gas Chromatograph/Mass Spectrometer Data System, Model MM7070 EHF and Accessories. Manufacturer: VG Analytical Limited, United Kingdom. Intended Use: See notice at 50 FR 24553.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides (1) mass ranges of 1 to 15600 and 1 to 7800 atomic mass units at accelerating potentials of 1000 and 2000 volts, respectively, and (2) operation in parent ion, daughter ion and neutral loss scanning modes. The National Institutes of Health advises in its memorandum dated September 10, 1985 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-55 Filed 1-2-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program; Construction Testing Services

AGENCY: National Bureau of Standards; Commerce.

ACTION: Extension of comment period.

SUMMARY: On October 8, 1985, the National Bureau of Standards (NBS) published in the **Federal Register** (50 FR 40987–40989) a request to establish a laboratory accreditation program (LAP) for construction testing services under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) (15 CFR Part 7). A copy of the September 23, 1985, request letter from STS Consultants, Ltd., Vienna, Virginia (STS) was set out as an appendix to the October 8 notice. In response to several requests, the period for accepting comments on the need for this requested LAP (which was to have ended on December 9) is being extended until June 30, 1986.

ADDRESS: Persons desiring to comment on the need for such a LAP are invited to submit their comments in writing on or before June 30, 1986, to the Director, Office of Product Standards Policy, National Bureau of Standards, ADMIN A 603, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Peter Unger, Associate Manager, or Robert Gladhill, Project Leader, Laboratory Accreditation, National Bureau of Standards, ADMIN A 531, Gaithersburg, MD 20899; phone (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Scope of LAP

NVLAP currently has a laboratory accreditation program (LAP) to accredit laboratories that test freshly mixed field concrete (Concrete LAP). In its September 23 letter, STS requested that the Concrete LAP be merged into a more broadly defined Construction Testing Services LAP. The LAP being requested by STS would include, but not be limited to, test methods for concrete, soils, asphalt, and geotextiles. STS identified over 30 ASTM standard test methods for inclusion under the LAP. Additional test methods could be included in response to requests.

May 14–15 Conference

NBS will hold a conference on May 14–15, 1986, to address the subject of accrediting construction materials laboratories. We anticipate that the input from this conference will be of considerable value in our deliberations regarding the need for the LAP.

Procedure Following Receipt of Comments

After the now extended comment period, NBS will thoroughly evaluate all comments pertaining to the proposed LAP. All interested persons (those who submit comments or request to be placed on the NVLAP mailing list) will be notified of the decision by the Director of NBS regarding development of this LAP. If that decision is to develop the LAP, technical assistance will be sought from all interested parties in developing the technical requirements for assessing applicant laboratories.

Documents in Public Record

All comments in response to this notice will be made part of the public record and will be available for inspection and copying at the NBS Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland.

Dated: December 27, 1985.

Raymond G. Kammer,

Acting Director, National Bureau of Standards.

[FR Doc. 86–11 Filed 1–2–86; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit by Southwest Fisheries Center, National Marine Fisheries Service (P77#17)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Southwest Fisheries Center, National Marine Fisheries Service.

b. Address: P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific Research/Enhance Propagation or Survival.

3. Name and Number of Marine Mammals: To take up to 475 Hawaiian monk seals (*Monachus schauinslandi*) by flipper tagging and/or bleach marking.

4. Type of Take:

5. Location of Activity: French Frigate Shoals, Laysan Island and Pearl and Hermes Reef, Hawaii.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammals Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 26, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–99 Filed 1–2–86; 8:45 am]

BILLING CODE 3510–11–M

Marine Mammals; Modification to Permit No. 399

Notice is hereby given that pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216) and §222.25 of the Regulations Governing Endangered Species Permits (50 CFR 222) Scientific Research Permit No. 399 (47 FR 58335) issued to Mr. Gregory Dean Kaufman and Mr. Roger Kevin Wood, Pacific Whale Foundation, P.O. Box 1083, Makena, Hawaii 96753, on December 21, 1982, is modified as follows:

Section B–8 is modified by deleting "December 31, 1985" and substituting therefor the following:

"December 31, 1986."

This modification becomes effective on December 31, 1985.

As requried by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied in good faith, (2) will not operate to the disadvantage of the endangered species

which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modifications are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington DC and;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 27, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–100 Filed 1–2–86; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Letter of Authorization

Notice is hereby given that on December 20, 1985, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B Taking of Ringed Seals Incidental to On-Ice Seismic Activities to the following:

Western Geophysical Company of America, 351 East International Airport Road, Anchorage, Alaska 99502–1591

Geophysical Service Inc., 5801 Silverado Way, Anchorage, Alaska 99502

This Letter of Authorization is valid for 1986 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subpart A and B).

Issuance of this letter is based on a finding that the total of taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington DC.; and,

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 26, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–101 Filed 1–2–86; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 20, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology Efforts to complement the Strategic Defense Initiative (SDI) Program will meet at the Pentagon, Washington, DC on January 22, 1986, 8:30 a.m. to 5:00 p.m.

The purpose of the meeting will be to receive briefings on the technology areas the Air Force considers key in the SDI Program. Additionally, the Committee will formulate plans for the further conduct of the study.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–77 Filed 1–2–86; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

December 24, 1985.

The USAF Scientific Advisory Board Engineering and Services Advisory Group will meet at the Air Force Engineering and Services Center, Tyndall AFB, FL on January 15–16, 1986, 8:30 a.m. to 5:00 p.m. both days.

The purpose of the meeting will be to receive briefings and discuss selected programs which relate directly to the operational mission of AF Engineering and Services and provide the Director advice on the conduct of these programs.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–78 Filed 1–2–86; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 22–23 January 1986.

Time: 0800–1600.

Place: The Pentagon, Washington, DC—Room 2E465.

Agenda: The Army Science Board Ad Hoc Subgroup for the Detection of Soviet Theater Nuclear Forces will meet for briefings by various government agencies and laboratories. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C, specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3939/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–62 Filed 1–2–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–C&E–86–19; OFP Case No. 61057–9304–21–22]

Acceptance of Petition for Exemption and Availability of Certification by Consolidated Power Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On November 12, 1985, Consolidated Power Company (CPC) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption due to lack of alternate fuel supply for a proposed gas-fired combined cycle powerplant to be located in West Rutland, Vermont from the prohibitions of Title II of the Powerplant and Industrial Fuel Use of 1978 (42 U.S.C. 8301 *et. seq.*) ("FUA" or

"the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR parts 500, 501, and 503. 10 CFR 503.32 specifies the evidence required in support of a petition for exemption on the basis of lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules governing the exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982).

The planned facility will consist of a nominal 230 MW combined cycle powerplant having two gas turbine generators and two heat recovery boilers. It is anticipated that the electricity generated will be sold to Vermont Electric Utilities for distribution to the New England Power Pool through the existing grid.

The facility will burn natural gas that is supplied through a new pipeline from Canada. During full load operation, the powerplant will consume 1,895 million Btu's per hour of natural gas with a net heat rate of approximately 8,095 Btu's per kilowatt hour. Completion and initial operation of the facility is planned for early 1989.

The site is located adjacent to the West Rutland Substation of Vermont Electric Power Company, Inc. (VELCO).

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR § 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m. Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before February 18, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-86-19 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Programs, Economic Regulatory Administration, Room GA-045, 1000 Indpendence Avenue, SW., Washington, DC 20585, Telephone (202) 252-4708;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW Washington, DC 20585 Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify, the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.9 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), CPC has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that CPC is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on December 23, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-27 Filed 1-2-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-20; OFP Case No. 67053-9305-01-24]

Acceptance of Petition for Exemption and Availability of Certification by University of Alaska-Fairbanks

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On December 10, 1985, University of Alaska-Fairbanks, completed its filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed oil-fired replacement boiler to be located in the University's powerplant at the University of Alaska-Fairbanks from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act

of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

University of Alaska-Fairbanks proposes to install an oil-fired replacement boiler. The proposed facility will be located in the university's powerplant, near Fairbanks. The boiler will be operated as a peaking boiler. It is designed to produce 100,000 pounds per hour steam at 610 psig and 750 degrees F which will be used for supplying heat and electricity to the university.

The university estimates that the replacement boiler will save approximately 1.6 million gallons of oil over the next ten years. The facility is scheduled to begin operation in 1986.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR § 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before February 18, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-86-20 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585, Telephone (202) 252-4708;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION:

University of Alaska-Fairbanks is requesting a permanent cogeneration exemption under 10 CFR 503.37 for an oil-fired replacement boiler in the university powerplant.

The proposed facility will be located in the university powerplant, near Fairbanks. The boiler will be operated as a peaking boiler. It is designed to produce 100,000 pounds per hour steam at 610 psig and 750 degrees F which will be used for supplying heat and electricity to the university.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.17(a)(1), University of Alaska-Fairbanks has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), University of Alaska-Fairbanks has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that University of Alaska-Fairbanks, is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on December 26, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-28 Filed 1-2-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to Franks Petroleum, Inc.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Franks Petroleum Inc. This Proposed Remedial Order alleges pricing violations in the amount of $234,436.20, plus interest, in connection with the sale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period June 1, 1979 through December 31, 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F–078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon: Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas, 77002, and upon: Carl A. Corrallo, Esquire, Chief Counsel for Administration Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–15, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Houston, Texas, on the 5th day of December 1985.

Sandra K. Webb,

Director, Houston, Office, Economic Regulatory Administration.

[FR Doc. 86–102 Filed 1–2–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–129–000 et al.]

Central Illinois Light Co. et al.; Electric Rate and Corporate Regulation Filings

December 27, 1985.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER86–129–000]

Take notice that on December 11, 1985, Central Illinois Light Company (CILCO) tendered for filing proposed amendments to its filing of November 1, 1985 of rate changes for full-requirements service to the Villages of Riverton and Chatham, Illinois. CILCO requests waiver of the Commission's notice requirements to permit the filing to become effective on January 1, 1986 as originally requested.

The increase to Riverton reflects a settlement agreement between CILCO and Riverton which provides for a phase-in through the end of 1990.

The original filing stated that CILCO was unable to obtain a settlement with Chatham and that no phase-in is proposed as to it. However, Chatham has not opposed the filing, and therefore the Company states that it is uncontested.

The original filing stated that the total increase to Chatham and Riverton does not exceed $200,000 based upon actual billing data for twelve months ending September 30, 1985.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER86–147–000]

Take notice that on December 9, 1985, the Central Vermont Public Service Corporation ("CVPS") tendered for filing as an initial rate schedule a System Sales & Exchange Agreement (the "Agreement") between the Bangor Hydro-Electric Company ("Bangor") and Central Vermont Public Service Corporation. The Agreement, dated March 25, 1984, provides for the sale of energy (a "Transaction") from the CVPS system to Bangor and the purchase by Bangor of energy from the CVPS system.

The Agreement provides that the parties will determine and agree on the day preceding (and shall strive to complete such agreement prior to 11:00 a.m. of the day preceding) the commencement of a Transaction whether it is economically advantageous to the parties that a sale, pursuant to the Agreement, take place during that day or week.

Bangor shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by Bangor for the preceding month by the energy reservation charge in dollars/MWH for each transaction occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in that month. The energy charge shall be based upon the forecasted incremental system energy cost adjusted for transmission losses to the delivery point.

CVPS shall pay Bangor for each month an Exchange occurs, an energy charge which shall be the sum of each of the hourly energy charges for each of the hours of exchange in such month. The hourly energy charge shall be the product of (1) the NEPEX Replacement Fuel Price for the Exchange Units; (2) the full load average heat rate of the Exchange Units as recorded to NEPEX on Form NX12 (expressed in BTU/MWH or, for steam fossil fired exchange units, the experienced average monthly heat rate of each such unit expressed in BTU/MWH); (3) the net energy output on MWH from the Exchange Units for such hour; and (4) the CVPS Entitlement Fraction in the Exchange Units for such hour.

In order to permit Bangor to achieve the mutual benefit of this Agreement, CVPS hereby requests that the Commission, pursuant to Section 35.11 of its regulations, waive the sixty-day notice period and permit the rate schedule filed herewith to become effective on March 25, 1984. The waiver, if granted, will have no effect upon purchasers under any other rate schedule. If said waiver is not granted, the parties to the Agreement will have to defer receiving the benefits accruing from the Agreement, i.e., their respective systems will be compelled to operate at less than optimum economic efficiency.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as the Vermont Public Service Board. CVPS further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Corporation

[Docket No. ER86–148–000]

Take notice that on December 12, 1985, the Central Vermont Public Service Corporation ("CVPS") tendered for filing as an initial rate schedule a System Sales Agreement (the "Agreement") between the Bangor Hydro-Electric Company ("Bangor") and Central Vermont Public Service Corporation. The agreement dated March 25, 1984 provides for the sale of energy (a transaction) from the CVPS system to Bangor and the purchase by Bangor of energy from CVPS system.

The Agreement provides that the parties will determine and agree on the day preceding (and shall strive to complete such agreement prior to 11:00 a.m. of the day preceding) the commencement of a Transaction whether it is economically advantageous to the parties that a sale, pursuant to the Agreement, take place during that day or week.

Bangor shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by Bangor for the preceding month by the energy reservation change in dollars/MWH for each transaction

occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in that month. The energy charge shall be based upon the forecasted incremental energy cost adjusted for transmission losses to the delivery point.

In order to permit Bangor to achieve the mutual benefit of this Agreement, CVPS hereby requests that the Commission, pursuant to Section 35.11 of its regulations, waive the sixty-day notice period and permit the rate schedule filed herewith to become effective on March 25, 1984. The waiver, if granted, will have no effect upon purchasers under any other rate schedule. If said waiver is not granted, the parties to the Agreement will have to defer receiving the benefits accruing from the Agreement, i.e. their respective systems will be compelled to operate at less than optimum economic efficiency.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as the Vermont Public Service Board. CVPS further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: January 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER86-215-000]

Take notice that on December 18, 1985 Idaho Power Company ("Idaho Power") tendered for filing the Average System Cost (ASC) determined by the Bonneville Power Administration ("BPA"), BPA's written ASC report, and Idaho Power's ASC schedules (Appendix 1) for Idaho Power's Idaho exchange jurisdiction. Idaho Power also submitted its agreement with and/or sections to BPA's Average System Cost determination.

The ASC rates filed have been determined pursuant to the Revised Average System Cost Methodology approved by the Commission in its Order No. 400 issued October 1, 1984 in Docket No. RM84-16-000, and section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 830-839h). This act provides for the exchange of electric power between Idaho Power and BPA for the benefit of Idaho Power's residential and farm customers.

A copy of the filing has been served upon BPA and all parties to Idaho Power's Appendix 1 filing with BPA.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this document.

5. Kentucky Power Company

[Docket No. ER86-212-000]

Take notice that on December 10, 1985, Kentucky Power Company (Kentucky) tendered for filing proposed changes in its electric resale rate schedules presently on file with the Commission which are applicable to the City of Olive Hill, Kentucky. Based on test period 12 months ended August 31, 1985 conditions, Kentucky estimates that the proposed changes in resale rates will increase annual revenues from the City of Olive Hill by $176,419, or 27.8%.

Kentucky states that the increase in wholesale rates is needed to compensate the Company for increased costs of doing business.

Kentucky requests that the rate changes be made effective, without suspension, upon 60 days notice.

Copies of the filing were served upon the City of Olive Hill and the Kentucky Public Service Commission.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Middle South Energy, Inc.

[Docket No. ER82-616-030]

Take notice that on December 9, 1985, Middle South Energy, Inc. (MSE) tendered for filing pursuant to Ordering Paragraph (L) of FERC Opinion No. 234, 31 FERC ¶ 61,305 (1985) and the FERC's letter order in this proceeding dated October 10, 1985, six copies of a proposed Decommissioning Expense Trust Fund Agreement between MSE and the Sunburst Bank, as Trustee.

The proposed Decommissioning Expense Trust Fund Agreement establishes an external sinking fund under the control of an independent trustee for accumulation of money intended to compensate for anticipated decommissioning expenses for Grand Gulf Unit.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER86-94-000]

Take notice that Orange and Rockland Utilities, Inc., (Orange and Rockland) on Dec. 17, 1985 amended its rate filing to provide the commission additional data to clarify the definition of its energy charge rate as set forth under 6b, page 6, of an executed Sale Agreement dated October 1, 1985, between Orange and Rockland and Public Service Electric and Gas Company (PSE&G) for the sale of interruptible power and energy by Orange and Rockland to PSE&G.

The energy charge rate is determined by the weighted average to be available to provide system energy at the time of a transaction. The forecasted energy charge rate for each individual generating unit is determined by summing all fuel and variable operations and maintenance costs associated with the production of energy for the transaction. These costs include start-up and no-load costs when appropriate.

Orange and Rockland states that a copy of its amendment was served on Public Service Electric and Gas Company.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities Inc.

[Docket No. ER86-96-000]

Take notice that Orange and Rockland Utilities, Inc. (Orange and Rockland) on Dec. 17, 1985, amended its rate filing to provide the commission additional data to clarify the definition of the energy charge rate as set forth under 5b, page 4, of an executed System Power Agreement dated October 1, 1985, between Orange and Rockland and New York State Electric and Gas Corporation (NYSE&G) from the sale of interruptible power and energy by and between Orange and Rockland and NYSE&G.

The energy charge rate is determined by the weighted average forecasted energy charge rate for the generating units determined to be available to provide system energy at the time of a transaction. The forecasted energy charge rate for each individual generating unit is determined by summing all fuel and variable operation and maintenance costs associated with the production of energy for the transaction. These costs include start-up and no-load costs when appropriate.

Orange and Rockland states that a copy of its amendment was served on New York State Electric and Gas Corporation.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER85-738-000]

Take notice that Pacific Gas and Electric Company (PG and E) on Nov. 27, 1985 tendered for filing a rate schedule, tariff provisions and charges which are applicable to the City of Oakland, California, acting by and through its Board of Port Commissioners

(Port) for resale service at the Metropolitan Oakland International Airport (Airport). This filing is made in compliance with the FERC order issued October 30, 1985.

As part of the rate schedule applicable to the Port, PG and E proposes the creation of a separate fuel cost adjustment mechanism and balancing account (the "FCA"). The proposed FCA is substantially similar to the FCA currently on file with this Commission in connection with service to PG and E's other resale cutomers.

The proposed effective date for the enclosed rate schedule is November 3, 1985. PG and E proposes that these lower rates be made effective subject to refund as of the proposed date. Should the Commission grant the proposed effective date, any difference between the rates accepted for filing pursuant to the Commission order of October 30, 1985, and the lower rates proposed herein, will be refunded to the Port to the extent actually collected by PG and E.

The rates proposed herein represent a decrease from the retail rate level currently applicable to the Port.

Comment date: January 6, 1986, in accordance with Standard Paragraph H at end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER86-216-000]

Take notice that on December 19, 1985, Pacific Gas and Electric Company (PG and E) tendered for filing a rate schedule change under the Sale, Interchange, and Transmission Contract No. 14-06-200-2948A (Contract 2948-A) between PG and E and the United States Department of Interior.

Contract 2948-A provides for the electrical integration of PG and E's power system with the United States Department of Interior's California Central Valley Project's (CVP) hydroelectric power system. The Western Area Power Administration (Western), acting on behalf of the United States, has requested that PG and E develop a replacement capacity rate schedule (the Replacement Capacity Rate Schedule) to augment Contract 2948-A. Under the Replacement Capacity Rate Schedule, PG and E may sell the United States capacity to replace CVP capacity whenever conditions do not permit CVP generation to support CVP Project Dependable Capacity as defined and determined under Articles 9(i) and 12 of Contract 2948-A.

PG and E requests that this Replacement Capacity Rate Schedule become effecive 60 days from the filing date.

Comment date: January 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

[Docket No. ER86-208-000]

Take notice that on December 9, 1985, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing First Revised Sheet No. 2, superseding Original Sheet No. 2 of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff).

Pacific states that changes to the First Revised Sheet No. 2 provide for the payment of interest by the Purchasers on payments received after the payment due date. Copies of this filing have been provided to all parties having executed Service Agreements under the Tariff.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

Docket No. ER86-214-000]

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on December 17, 1985, tendered for filing, in accordance with Section 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Idaho and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Idaho (Bonneville's Docket No. 5-A3-8501). The Revised Appendix 1 calculates the ASC for the state of Idaho applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective December 31, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Idaho Public Utilities Commission, and Bonneville's Direct Service Industrial Customers.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this document.

13. Public Service Company of New Mexico

[Docket No. ER86-183-000]

Take notice that on November 25, 1985 Public Service Company of New Mexico (PNM) submitted for filing a letter agreement between itself and San Diego Gas & Electric Company (SDG&E), dated September 27, 1985, for the sale by PNM to SDG&E of varying amounts of precommercial energy generated by Palo Verde Nuclear Generating Station Unit 1. PNM requests waiver of the notice requirements of the Commission's Regulations to allow the letter agreement to become effective as of September 1, 1985.

PNM states that copies of the filing have been mailed to SDG&E and the New Mexico Public Service Commission.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER86-209-000]

Take notice that on December 10, 1985, Public Service Electric and Gas Company tendered for filing a Transmission Service Agreement between itself and Atlantic City Electric Company.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

15. San Diego Gas and Electric Company

[Docket No. ER86-49-000]

Take notice that on December 17, 1985 San Diego Gas and Electric Company (SDG&E) tendered for filing additional information intended to supplement filing in Docket No. ER86-49-000.

SDG&E desires to include fully allocated cost information regarding SDG&E's generating stations which is necessary in order to make economy energy transaction under section A-8-1 of the agreement.

Included in this filing are the following documents:

1. Attachment A—clarification of Section A-8-2.

2. Attachment B—detailed Cost Data for SDG&E Generating Station.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

16. Utah Power & Light Company

[Docket No. ER84-572-001]

Take notice that on December 9, 1985 Utah Power & Light tendered for filing its Compliance Report pursuant to the Order of the Commission issued on November 26, 1985. Copies of the filing were served upon Utah Power's resale customers, the affected State Public Service Commission, and all other parties required to be served.

Comment date: January 6, 1986. in accordance with Standard Paragraph H at the end of this document.

17. Wisconsin Electric Power Company

[Docket No. ER86-218-000]

Take notice that Wisconsin Electric Power Company, on December 20, 1985, tendered for filing proposed changes to its rates for sales for resale to its wholesale customers. A Settlement Agreement was reached by the Company and all of its wholesale customers prior to the filing of this case. In this filing, the Company proposes an increase in the base rates charged to the wholesale customers in the amount of $2,305,326 or 3.9% on a 1986 test year basis. This amount is stated as an increase over the rates currently effective as authorized by the Federal Energy Regulatory Commission in Docket No. ER84-103.

The Company proposes an effective date for the filing of January 1, 1986, without suspension. The Company respectfully requests waiver of the sixty-day notice requirement in order to allow this effective date.

Copies of the filing have been served upon the Company's jurisdictional customers. Copies have also been mailed to the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: January 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER86-213-000]

Take notice that on December 16, 1985, Wisconsin Public Service Corporation ("the Company") of Green Bay, Wisconsin, filed a revised tariff sheet and a supplement to its service agreement with Wisconsin Public Power Incorporated SYSTEM ("WPPI"). Both the service agreement supplement and the revised tariff sheet relate to the Company's FERC Electric Tariff, Original Volume No. 2 for all requirements service and contain provisions relative to peak shaving. The filing does not change the level of the Company's rates or affect terms and conditions other than those related to peak shaving.

The Company asks that the supplemental agreement and the revised tariff sheet be given a January 1, 1986 effective date so that peak shaving may commence on that date pursuant to the parties' agreement. The Company represents that WPPI joins in the request for a Janauary 1, 1986 effective date and also supports the filing which the Company has made. The Company states that it has furnished copies of the filing to WPPI, its other customers who are served under its all requirements tariff and the Wisconsin Public Service Commission.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. EC86-9-000]

Take notice that on December 9, 1985, Virginia Electric and Power Company (Applicant) filed an application pursuant to § 203 of the Federal Power Act with the Federal Energy Regulatory Commission for authorization to enter into a Bill of Sale with the Southside Electric Cooperative (Southside) by which Applicant will sell and Southside will purchase transmission line facilities Located at the Red House to Hancock Delivery Points. The purchase price is $200,000.

Applicant is incorporated under the laws of the State of Virginia with its principal business office at Richmond, Virginia and is qualified to transact business in the states of Virginia, North Carolina and West Virginia. Applicant is engaged, among other things, in the business of generation, distribution and sale of electric energy in substantial portions of the State of Virginia.

Applicant represents that the proposed sale of these facilities will facilitate the efficiency and economy of operation and service to the public by allowing Southside to utilize the transmission lines, now owned by Applicant, to provide electric service to Southside's residential and industrial customers.

Comment date: January 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29 Filed 1-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES86-21-000 et al.]

Citizens Utilities Co. et al.; Electric Rate and Corporate Regulation Filings

December 27, 1985.

Take notice that the following filings have been made with the Commission:

1. Citizens Utilities Company

[Docket No. ES86-21-000]

Take notice that on December 18, 1985, Citizens Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the issuance of short-term promissory notes during the period ending January 22, 1988, in aggregate principal amount not to exceed $66,000,000 at any one time.

Comment date: January 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Company

[Docket No. ES86-22-000]

Take notice that on December 18, 1985, Illinois Power Company, filed application seeking an order pursuant to section 204 of the Federal Power Act, authorizing the issuance of not more than $500 million of short-term notes to be issued from time to time with a final maturity date of not later than December 31, 1987.

Comment date: January 17, 1986, in accordance with Standard Paragraph E at the end of the notice.

3. South Carolina Public Service Authority

[Docket No. ES86-17-000]

Take notice that on December 16, 1985, the South Carolina Public Service Authority ("Authority") filed an application seeking an order authorizing the issuance of up to $200,000,000 in Electric System Expansion Revenue Bonds, Refunding series. The bonds are to be sold at a negotiated sale with a single underwriting group. The proceeds will be used to refund outstanding

Electric System Expansion Revenue Bonds and for other purposes.

Comment date: January 14, 1986, in accordance with Standard Paragraph E at the end of the notice.

4. South Carolina Electric and Gas Company

[Docket No. ES86-20-000]

Take notice that on December 11, 1985, South Carolina Electric and Gas Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue not more than $150 million of unsecured promissory notes.

Comment date: January 9, 1986, in accordance with Standard Paragraph E at the end of the notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-30 Filed 1-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-472-000 et al.]

Natural Gas Certificate Filings; Columbia Gulf Transmission Co. et al.

December 27, 1985.

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Company

[Docket No. CP85-472-000]

In Docket No. CP85-472-000, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard Section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on April 29, 1985, filed in Docket No. CP85-472-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Texas Gas from a point of receipt at an existing interconnection between the facilities of Applicant and Sea Robin Pipeline Company in Vermilion Parish, Louisiana, for delivery to Texas Gas at an existing interconnection between the facilities of Applicant and Texas Gas at the terminus of the Blue Water Project near Egan, Acadia Parish, Louisiana. Applicant would transport up to 1,000 Mcf of natural gas per day on an interruptible basis pursuant to a gas transportation agreement dated August 17, 1984. The proposed service, it is said, would provide Texas Gas with the most practical and economical means of transporting an additional supply of natural gas.

Applicant states that Texas Gas would pay 6.60¢ per Mcf of natural gas received for transportation at the point of receipt. Applicant states further that the transportation would continue for a period of seven years, and yearly thereafter unless terminated by either party.

Comment date: January 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket No. CP85-770-000]

In Docket No. CP85-770-000, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the reference docket is being renoticed.

Take notice that on August 9, 1985, Applicant filed in Docket No. CP85-770-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on a best-efforts, interruptible basis, up to 8,000 Mcf of natural gas per day of Texas Gas' gas produced from South Marsh Island Block 160 and Euguen Island Blocks 330 and 337, offshore Louisiana, as well as any excess volumes Applicant, at the request of Texas Gas, may agree to transport.

Applicant states that it would transport such gas for Texas Gas from the existing interconnection of the facilities of Applicant and Sea Robin Pipeline Company in Vermilion Parish, Louisiana, and would redeliver equivalent volumes to Texas Gas at an interconnection of the facilities of Applicant and Texas Gas at the terminus of the Blue Water Project near Egan, Acadia Parish, Louisiana.

Texas Gas, it is said, would pay Applicant a charge of 6.6 cents per Mcf of gas received for transportation at the point of receipt. It is said further that the transportation would continue for a period of seven years from the date of initial delivery and yearly thereafter unless terminated by either party.

Comment date: January 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gulf Transmission Company, Columbia Gas Transmission Corporation, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

[Docket No. CP85-388-000]

In Docket No. CP85-388-000, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, Columbia Gas

Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) (jointly referred to as Applicants), P.O. Box 2511, Houston, Texas 77001, requested specific certificate authorization to continue transportation services pursuant to section 7(c) of the Natural Gas Act which were self-implemented under their Order No. 60 blanket certificates and were eligible for "grandfathered" treatment pursuant to § 284.105. These specific transactions could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicants have, however, indicated that they desire the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on March 25, 1985, Applicants filed in Docket No. CP85-388-000 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of natural gas offshore Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to transport and exchange natural gas offshore Texas. It is stated that Tennessee has the right to purchase natural gas from High Island Block 281A, offshore Texas, from Tenneco Oil Company, Samedan Oil Corporation, and New England Energy, Inc. (referred to jointly as Tenneco). It is further stated that Columbia has the right to purchase natural gas from wells in High Island Blocks 280 and 286, offshore Texas, from Exxon Company, U.S.A. (Exxon). Applicants claim that by agreements dated October 1, 1979, the gas reserves from High Island Blocks 280, 281, and 286 were unitized and that gas produced from Exxon well Nos. A-1, A-2 and A-3, and Tenneco well Nos. A-1, A-2, A-4 and A-6 would be allocated 50 percent to Tenneco and 50 percent to Exxon.

It is stated that Columbia Gulf would receive Tennessee's gas at High Island Block 287-A and Tennessee in exchange would receive Columbia's gas at High Island Block A-281. Applicants indicate that if on any day Tennessee has gas available in excess of the amount Columbia has available for delivery to Tennessee then Columbia Gulf would transport all of the excess gas, on a best-efforts basis, to an underwater side tap on the High Island Offshore System (HIOS) in High Island Block 280, offshore Texas, for the account of Tennessee. It is further stated that if on any day Columbia has gas available in excess of the amount Tennessee has available for delivery to Columbia then Tennessee would transport all of the excess gas, on a best-efforts basis, to an underwater side tap on HIOS in High Island Block 281, offshore Texas, for the account of Columbia.

Applicants state that for all excess gas transported by Columbia Gulf, Columbia Gulf would receive 1.82 cents per Mcf of gas at 14.73 psia and 60°F. It is claimed that this rate is in accordance with the determination in Docket No. RP84-74. It is further stated that for all excess gas transported by Tennessee, Columbia would pay a transportation rate of 3.65 cents per Mcf of gas.

It is asserted that such rates would be subject to increase or decrease pursuant to the agreement among the Applicants and subject to any order issued in any rate proceeding affecting any of the Applicants.

Comment date: January 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP85-703-000]

In Docket No. CP85-703-000 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Panhandle has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on July 15, 1985, Panhandle filed in Docket No. CP85-703-000 an application pursuant to section 7(c) of the Natural Gas Act for permission and approval to abandon certain sales services and for a certificate of public convenience and necessity authorizing the interruptible transportation of up to 1,000 Mcf of natural gas per day for DeKalb Swine Breeders, Inc. (Dekalb), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to receive up to 1,000 Mcf of gas per day at an existing interconnection between the pipeline facilities of Panhandle and Kansas Power and Light Company (KPL) in Reno County, Kansas.

Panhandle also requests permission to abandon a portion of sales services, at the DeKlab delivery point, performed on behalf of the Gas Service Company (Gas Service), which presently serves DeKalb. Gas volume attributed to the DeKalb delivery point would be reallocated to the remaining delivery points of Gas Service thereby maintaining its present contract demand levels.

Panhandle proposes to charge Dekalb 5.15 cents per Mcf of gas for the transportation service pursuant to an agreement dated February 19, 1985.

Comment date: January 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation

[Docket No. CP85-781-000]

In Docket No. CP85-781-000, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order No. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on August 15, 1985, Applicant filed in Docket No. CP85-781-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on

file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Applicant and Southern dated July 18, 1985, Applicant states it has agreed to transport up to 1,500 dt equivalent of natural gas per day on behalf of Southern. Applicant states that Southern has gas supplies available in West Cameron Block 253, offshore Louisiana, which it desires to have transported and delivered for its account to Trunkline Gas Company (Trunkline), onshore Louisiana. Applicant explains that it would receive gas from Southern at an existing interconnection on Applicant's West Cameron System in West Cameron Block 250, offshore Louisiana, up to 1,500 dt equivalent of natural gas per day and then transport and redeliver equivalent quantities for the account of Southern to Trunkline at existing interconnection located onshore Louisiana in Beuregard and Allen Parishes, Louisiana, for further transport to Southern.

Applicant explains further that it would charge Southern a monthly charge of $10,566.75 and would reduce the quantity of gas received for transport for applicable shrinkage, for gas used or consumed as fuel or lost by shrinkage due to processing of the gas for the extraction of liquefiable hydrocarbons if such gas is processed. In addition, Applicant states that it would charge Southern an amount equivalent to the product of 23.16 cents per dt and the sum of—

(1) The quantity of excess gas received by Applicant in said month if such gas in excess of the contract quantity was scheduled to be received by Applicant, plus.

(2) The quantity of gas received by Applicant on any day in said month which is in excess of 102 percent of the contract quantity if such gas in excess was received by Applicant due to Applicant's inability to maintain precise control of receipts, plus

(3) The quantity of gas received by Applicant in said month which is in excess of the sum of (a) the contract quantity multiplied by number of days in such month, and (b) the sum of items (1) and (2) for all applicable days of said month, less

(4) The dt equivalent of the liquefiables extracted, if any, associated with gas transported in said month.

Comment date: January 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company, United Gas Pipe Line Company

[Docket No. CP85-873-000]

In Docket No. CP85-873-000, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, (collectively referred to as Applicants) requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self-implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered treatment" pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicants have, however, indicated that they desire the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on September 12, 1985, Applicants filed jointly in Docket No. CP85-873-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas between Southern and United pursuant to the terms of an exchange agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to perform an exchange service pursuant to the terms and conditions of the exchange agreement between Southern and United, dated May 27, 1983, as amended January 1, 1984, and July 26, 1984. Applicants state that United has arranged to purchase certain quantities of gas from (1) Chevron U.S.A. Inc., *et al.*, and Natomas North America, Inc., *et al.*, from the Chevron-Rigolets Gun Club No. 1 Well in Orleans Parish, Louisiana, and the Natomas S.L. 7951 No. 1 Well in St. Bernard Parish, Louisiana, (2) Alabama Methane Production Company (AMPCO) from the AMPCO Seam Project in Tuscaloosa County, Alabama, and (3) Pogo Producing Company, *et al.*, from Breton Sound Area Block 23, offshore Louisiana.

Applicants state that Southern has agreed to receive for exchange a daily aggregate quantity of gas of up to 10 billion Btu purchased by United from the above-referenced sources and made available to Southern at (1) the existing point of interconnection between United's 6-inch pipeline facilities and Southern's 12-inch Fort Pike lateral line located in Orleans Parish, Louisiana, (2) Southern's Tuscaloosa No. 2 Measuring Station located in Tuscaloosa County, Alabama, and (3) the existing point of interconnection between pipeline facilities jointly owned by United and Southern extending from Breton Sound Area Block 23 and Southern's 6-inch pipeline located in Breton Sound Area Block 22, offshore Plaquemines Parish, Louisiana.

Southern states that it would effect the exchange of gas with United by (1) causing Sea Robin Pipeline Company (Sea Robin) to deliver to United for its account gas that Sea Robin currently delivers for Southern's account at the point of interconnection between the facilities of United and Sea Robin near the outlet of the Sea Robin processing plant located in Vermilion Parish, Louisiana; (2) having gas that may be made available for Southern's account be made available to United for United's account at the point of interconnection between the facilities of United and Natural Gas Pipeline Company of America (Natural) at Natural's existing metering facilities located near the outlet of the Texaco Henry plant in Vermilion Parish, Louisiana; and (3) causing Koch Hydrocarbon Company (Koch) to deliver to United for its account gas Koch currently delivers for Southern's account at the point of interconnection between the facilities of United and Koch near the outlet of the Koch Harmony plant in Clerke County, Mississippi.

Applicants state that the proposed exchange services would be performed on an interruptible basis and would be subject to the availability of sufficient capacity for United and Southern to perform the services without detriment or disadvantage to their respective customers which are dependent on their general system supply. Applicants further state that the exchange services would be subject to the availability of excess capacity in the respective operating conditions and the system requirements of United and Southern.

Applicants state that the exchange of gas as proposed would be mutually beneficial to United and Southern and, accordingly, no fee would be charged for the proposed exchange services.

Comment date: January 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP85-914-000]

In Docket No. CP85-914-000, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Trunkline has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on September 26, 1985, Trunkline filed in Docket No. CP85-914-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Consolidated Gas Transmission Corporation (Consolidated), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation agreement between Trunkline and Consolidated dated November 28, 1984, Trunkline has agreed to transport up to 12,000 Mcf of natural gas per day on behalf of Consolidated. It is stated that Trunkline proposes to transport 8,000 Mcf of natural gas per day on a firm basis and 4,000 Mcf of natural gas per day on an interruptible basis. Trunkline would receive volumes for Consolidated's account at an existing point of interconnection between Trunkline and Consolidated on Trunkline's platform in South Timbalier Block 72, offshore Louisiana. Trunkline would deliver for Consolidated's account to Transcontinental Gas Pipe Line Corporation in Beauregard Parish, Louisiana, and/or to the onshore terminus of U-T Offshore System in Cameron Parish, Louisiana. It is stated that for the transportation service, Consolidated would pay a unit rate of 8.22 cents per Mcf for interruptible service and a monthly demand charge of $20,000 for firm service.

Comment date: January 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-98 Filed 1-2-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51601; FRL-29-2933-4]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85-29666, beginning on page 51302 in the issue of Monday, December 16, 1985, make the following corrections:

On page 51303, first column, under p86-237, the first symbol in the seventh line should have read ">"; and in the eighth line "<2,000" should have read ">2,000."

BILLING CODE 1505-01-M

[ER-FRL-2948-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed December 23, 1985 through December 27, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850549, Draft, SFW, AK, Kodiak National Wildlife Refuge Comprehensive Conservation Plan and Wilderness Designation, Due: March 21, 1986, Contact: Bill Knauer (907) 786-3399.

EIS No. 850550, Final, AFS, MT, Stillwater Valley Platinum-Palladium Mining and Milling Project, Custer National Forest, Stillwater County, Due: February 3, 1986, Contact: Philip Joquith (406) 446-2103.

EIS No. 850551, DSuppl, FHW, MI, MI-59 Reconstruction, Mound Road to I-94, New Alternate Alignment, Macomb County, Due: February 17, 1986, Contact: Thomas Fort, Jr. (517) 377-1879.

EIS No. 850552, FSuppl, COE, CA, Walnut Creek Flood Control Plan, Upper Pine Creek Channel Modification Update, Contra Costa County, Due: February 10, 1986, Contact: Jeff Groska (916) 551-1858.

EIS No. 850553, Draft, MMS, CA, San Miguel Project and Northern Santa Maria Basin Area Study, Lease OCS-P 0409, Outer Continental Shelf Oil Development Plan, San Luis Obispo and Santa Barbara Counties, Due: February 17, 1986, Contact: Mary Elaine Warhurst (215) 894-7234.

EIS No. 850554, Final, NOA, PAC, Taking of Marine Mammals Associated with Tuna Purse Seining Operations, 1986 Amendments to Regulations, Due: February 3, 1986, Contact: William Gordan (202) 634-7283.

Amended Notices: EIS No. 850407, DSuppl, AFS, IN, Hoosier National Forest, Land and Resource Management Plan, Off-Road Vehicle Policy Due: January 27, 1986, Published FR 9-27-85 Review period extended.

Dated: December 30, 1985.
Allan Hirsch,
Director, Office of Federal Activities.
[FR Doc. 86-108 Filed 1-2-86; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-2948-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 16, 1985 through December 20, 1985 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-J61067-CO, Rating 3, Wolf Creek Valley Ski Area Development, Special Use Permit, San Juan Nat'l Forest, 404 Permit, CO, SUMMARY: EPA does not believe the DEIS adequately discloses and assesses indirect, secondary, and cumulative environmental impacts associated with the permit action on air quality, water quality and other natural systems. EPA recommends the DEIS be reissued or adequately supplemented with an appropriate public comment period prior to proceeding to a FEIS.

ERP No. D-AFS-J67005-MT, Rating EC2, Jardine Joint Venture Gold Mine Project, Permit Application, Gallatin Nat'l Forest, 404 Permit, MT. Summary: EPA expressed concerns with potential air and water quality impacts. EPA suggested that more detailed monitoring program using aquatic communities would provide a more sensitive indicator of release of contaminants to surface water and help identify sources of contaminants in the groundwater. EPA suggested that the air quality review should address potential impacts of toxic constituents which may be present in mine tailings and the National Ambient Air Quality Standards (NAAQS) in addition to the Montana Standards.

ERP No. D-BIA-G08010-NM, Rating LO, Ojo 345 kV Transmission Line Extension and Substation Construction, Approval and Right-of-Way Grants, NM. Summary: EPA expressed no objection to the proposed action as described.

ERP No. D-COE-K32044-HI, Rating LO, Kahana Bay Light-Draft Navigation Improvements and Harbor of Refuge Development, HI. Summary: EPA had no objections to the DEIS and noted that the project will comply with CWA Section 404(b) (1) guidelines (wetlands protection) if mitigation measures recommended by the US Fish and Wildlife Service are adopted by the Army Corps.

ERP No. D-COE-K36086-AZ, Rating LO, Clifton Flood Control Plan, San Francisco R., AZ. Summary: EPA had no objections to the DEIS, however, EPA did the adoption of measures to protect water quality, particularly for drinking supplies, during the construction phase of the Clifton flood control project.

ERP No. D-FHW-E40235-TN, Rating EC2, I-40/75 and Interchanges Improvements, East of Pellissippi Parkway to East of Papermill Rd., 404 Permit, TN. Summary: EPA's primary concerns are the presence of karst geologic features in the project area and predicted noise impacts. EPA requested: 1) Additional design and mitigation information regarding these concerns; 2) corrections of the air quality analysis, 3) inclusion of a no-build air and noise analysis for the design year, 4) a wetland jurisdictional determination as appropriate, and 5) environmental information regarding the formerly considered "By-Pass" alternative.

ERP No. D-FHW-K40151-CA, Rating LO, CA-2/Santa Monica Blvd., Improvement, San Diego Freeway/I-405 to Fairfax Ave., CA. Summary: EPA expressed concerns about potential growth-related air quality impacts, and requested that the final EIS discuss whether widening CA-2 will encourage the trend to higher density development in the area and secondary air quality impacts.

ERP No. D-UAF-K11029-NV, Rating EC2, Groom Mtn. Range Addition, Nellis AFB, Bombing and Gunnary Range, Renewed Withdrawal from Public Lands, NV. Summary: EPA expressed concerns about impacts to air quality and water quality from the proposed Air Force project. Mitigation for and monitoring of water quality impacts due to grazing and soil erosion were requested.

Final EISs

ERP No. F-AFS-D65012-00, Jefferson Nat'l Forest, Land and Resource Mgmt. Plan, WV, VA, and KY. Summary: EPA identified a number of areas of the document requiring further analysis. In particular, the water quality impacts associated with certain resource uses and forest practices were identified.

ERP No. F-BLM-K03014-00, Pacific Texas Pipeline Project, Construction and Operataion, Right-of-Way Permit, Sect. 10 and 404 Permits, CA, TX, AZ, and NM. Summary: EPA expressed concern about stream crossing mitigation and bulk sediment analyses for DDT concentrations.

ERP No. F-COE-E34028-FL, Canaveral Harbor West Basin and Approach Channel Improvements, Canaveral Bright, FL. Summary: EPA's opinion on the merits of the various environmental mitigation plans remains unchanged. EPA continues to favor plan A; however, plan B, the selected alternative, contains sufficient measures to make it acceptable. EPA understands that congressional approval is being sought to implement option A and awaits the outcome of these efforts with interest.

ERP No. F-COE-E36154-FL, Upper St. Johns River Basin Flood Control, Water Supply and Enhancement Plan, FL. Summary: EPA's concerns which were expressed in our comment on the DEIS have been adequately addressed in the final EIS. EPA has a lack of objections to the FEIS.

ERP No. F-FHW- B40050-MA, Third Harbor Tunnel/I-90 Extension, I-93 to East Boston, Right-of-Way Acquisition, MA. Summary: EPA believes that this project can be constructed and operated without resulting in significant impacts to the environment. However, a strong commitment is needed in the Record of Decision (ROD) to include EPA and other interested parties in project development and design and future assessments to insure unresolved air quality, and ocean disposal-dredge and fill permit related activities are satisfactory resolved. EPA requested that FHWA acknowledge, in the ROD, their responsibility to prepare Supplemental EISs and EAs to address the issues identified as "unresolved issues".

ERP No. F-MMS-A02210-00, 1985 OCS Oil and Gas Sale #111, Exploration, Development, and Production of Hydrocarbon Resources, Lease Offering, Offshore the Mid-Atlantic States MA, RI, CT, NY, NV, PA, DE, MD, VA, NC. Summary: EPA commented on: 1) Special habitats and communities in and near submarine canyons and nearshore resources, 2) NPDES permits for any offshore oil and gas related facilities, and potential use conflicts arising from MMS's proposal to offer blocks in the EPA designated 106-mile ocean dumping sites and the proposed North Atlantic ocean incineration site.

Regulations

ERP No. R-ACH-A86220-00, 36 CFR Part 800, Protection of Historic Properties, Revision of Regulations (50 FR 41828). Summary: EPA concurred with the Advisory Council's efforts to simplify certain steps in the cultural resources review process, however, EPA found the discussion of public participation rather vague or limited and suggested that in several sections of the regulations, public participation should be clarified. EPA also recommended that the discussion in the previous regulations on coordinating the cultural resource review process with the NEPA review be reinstated and that the regulations include a section on delegation.

Dated: December 30, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-109 Filed 1-2-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2948-5]

Intent To Prepare an Environmental Impact Statement; Calvert Lignite Mine and Power Plant, TX

AGENCY: U.S. Environmental Protection Agency (EPA) Region VI.

ACTION: Preparation of an Environmental Impact Statement for the issuance of new Source National Pollutant Discharge Elimination System (NPDES) permits to the Phillips Coal Company (PCC) and Texas—Mexico Power Company (TNP) for discharges of wastewater from the Calvert Lignite Mine and Power Plant Project, Robertson County, Texas.

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act, EPA has identified a need to prepare an environmental impact statement and therefore published this Notice of Intent pursuant to 40 CFR 1507.7.

FOR FURTHER INFORMATION CONTACT: Clinton B. Spotts, Regional EIS Coordinator, U.S. EPA Region 6 (E-F), 1201 Elm Street, Dallas, Texas 75270, (214) 767-2716 or FTS 729-2716.

Summary

1. Proposed Action

The electric generating station proposed by TNP would consist of four power units of 150 megawatts each and utilize circulating fluidized bed combustion technology. Cooling water for the generating station would be provided by groundwater and on-site makeup reservoirs. The generating station and associated facilities would occupy about 300 acres. The PCC's proposed lignite mine would provide fuel to the generating station for approximately 35 years. The mine would be a multi-seam, open pit operation utilizing the terrace mining technique. Overburden removal would involve the use of draglines, loading shovels, trucks, front-end loaders and scrapers. The total acreage to be disturbed by mining and support activities is estimated at 5,000 acres.

2. Alternatives

a. Issue water discharge permits for projects as proposed.

b. Issue water discharge permits with modifications.

c. Deny permits (no action).

3. Scoping Process

Details of the project will be presented and the public is invited to identify issues that should be addressed in the EIS. The meeting will be held Thursday, January 30, 1986, at 7:00 p.m., in the Franklin High School gymnasium (located one-fourth mile west of Franklin, Texas on FM 1644).

4. Request for Copies of the Draft EIS

All interested parties are encouraged to submit their names and addresses to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices.

Dated: December 30, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-107 Filed 1-2-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-010866.

Title: WISCO/ATL Joint Service Agreement.

Parties: West Indies Shipping Corporation, Antilles Lloyd Ltd.

Synopsis: The proposed agreement would establish a joint service arrangement between the parties in the trade between U.S. Gulf Coast ports in Texas, Louisiana, Mississippi, Alabama, and U.S. inland and coastal points via such ports, and all ports and points in Guyana, Belize, Mexico, and all islands of the Carribbean.

Dated: December 30, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86-74 Filed 1-2-86; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 223-003342-004.

Title: Seattle Terminal Agreement.

Parties: Stevedoring Services of America (SSA), Matson Terminals, Inc. (Matson).

Synopsis: This agreement provides that SSA will perform maintenance and repair services in Seattle, Washington on containers and related equipment owned and/or operated by Matson. Amendment No. 4, Article III requires SSA to obtain the approval of Matson before undertaking any maintenance or repair work on straddle carriers. Article IV-C is added to require Matson to provide sufficient work to occupy employees for a complete shift when maintenance or repair work is requested by Matson, and to require SSA to assign

mechanics with experience to perform the work. Article V–B is amended to provide limits to the reimbursement cost of parts furnished by SSA in the repair and maintenance work.

Agreement No.: 224–010865.

Title: Tacoma Terminal Agreement.

Parties: Port of Tacoma (Port), Murray Pacific Corporation (formerly Pan Pacific Trading Co.) (MPC).

Synopsis: The agreement provides for the leasing by the Port to MPC of certain premises consisting of 51.4 acres situated in Pierce County, Washington. The premises shall be used for the receipt, sorting staging and delivery of logs to the Port's piers for shipment, and for uses incidental to such purposes. The Port grants MPC an additional right to preferential berthing of vessels at Berth B, Blair Terminal, within the Port.

Agreement No.: 217–010867.

Title: United States Lines, Inc. and South African Marine Corporation Limited Space Charter Agreement.

Parties: United States Lines, Inc. (U.S. Lines) South African Marine Corporation Limited (Safmarine).

Synopsis: The proposed agreement would permit U.S. Lines to charter vessel space to Safmarine for the carriage of cargo in the trade between ports and points in the United States of America on the one hand, and ports in Africa from the northern border of South West Africa to and including Cape Guardafui, Somalia, including the islands in the Indian Ocean and the islands of Ascension and St. Helena on the other hand, directly or via one or more European relay ports. The parties have requested a shortened review period.

Dated: December 30, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–75 Filed 1–2–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Irving Bank Corporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage *de novo* through its subsidiary, One Wall Street Brokerage, Inc., Scarsdale, New York (with a branch in New York, New York), in providing securities brokerage services, related securities credit activities pursuant to 12 CFR Part 220, and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, and providing providing quote information to customers.

Board of Governors of the Federal Reserve Systems, December 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–30973 Filed 12–31–85; 4:26 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 27, 1985.

Social Security Administration

Subject: Quarterly Statistical Report on Recipients and Payment Under State-Administered Assistance Programs for Aged, Blind, and Disabled (Individuals and Couples) Recipients—Extension (0960–0130).

Respondents: State or Local Governments.

Subject: Time Report of Personnel Services for Disability Hearings Unit NEW.

Respondents: State or Local Governments.

OMB Desk Officer: Judy A. McIntosh.

Public Health Service—National Institutes of Health

Subject: National Longitudinal Survey of Work Experience of Youth (National Institutes of Health)—NEW.

Respondents: Individuals or Households.

Food and Drug Administration

Subject: Investigational New Drug Application—Revision (0910–0162).

Respondents: Businesses or Other For-Profit.

Alcohol, Drug Abuse and Mental Health Administration

Subject: Confidentiality of Alcohol and Drug Abuse Patient Records—Extension (0930–0092).

Respondents: Federal Agencies or Employees; Non-profit Institutions; Small Business or Organizations.

OMB Desk Officer: Bruce Artim.

Health Care Financing Administration

Subject: Evaluation of the Medicare Competition Survey Questionnaire—(0938–0289).

Respondents: Individuals or Households.

Subject: Physical Therapist in Independent Practice Survey Report Form—Extension (0938–0071);

Respondents: State or Local Governments.

Subject: Quarterly Medicaid Statement of Expenditures and Schedule I Home and Community-Based Waiver Reporting Revision—(0938—0067).

Respondents: State or Local Governments.

OMB Desk Officer: Fay S. Iudicello.

Office of Human Development Services

Subject: WIN Certification Report (117–A); SAU Certification Record (SAU–4); WIN Grant Change Report (117–B); WIN Grant Change Record (IM–9)—Extension (0980–0157).

Respondents: State or Local Governments.

OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC. 200503. ATTN: (name of OMB Desk Officer).

Dated: December 27, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–18 Filed 1–2–86; 8:45 am]

BILLING CODE 4150–04–M

National Institutes of Health

National Cancer Institute; Meeting; Cancer Education Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of Cancer Education Review Committee, National Cancer Institute, National Institutes of Health, February 28, 1986, Holiday Inn Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on February 28, from 8:30 a.m. to 10:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 28 from approximately 10:00 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Ms. Cynthia Sewell, Executive Secretary, Cancer Education Review Committee, National Cancer Institute, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7721) will furnish substantive program information.

Dated: December 23, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–12 Filed 1–2–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of Board of Scientific Counselors, Division of Cancer Prevention and Control, Budget and Evaluation Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Budget and Evaluation Subcommittee, Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, January 22, 1986, Conference Room 4, First Floor, A-Wing, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892. This meeting will be open to the public on January 22 from 7:30 p.m. to 9:30 p.m. to review program concepts, operations and evaluation activities of the Division of Cancer Prevention and Control. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Mr. J. Henry Montes, Executive Secretary, Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20892 (301–427–8630) will furnish substantive program information.

Dated: December 27, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–13 Filed 1–2–86; 8:45 am]

BILLING CODE 4140–01–M

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting; Fogarty Center Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Fogarty International Center Advisory Board, January 28–29, 1986, in the Stone House (Building 16), at the National Institutes of Health.

The meeting will be open to the public on January 28 from 8:30 a.m. to 11;30 a.m., and from 2 p.m. to 5 p.m.; and on January 29 from 8:30 a.m. to 3 p.m. The agenda will include a presentation of the NIH Peer Review and Appeals Process by Dr. William Raub, NIH Association Director for Extramural Affairs; reports from Working Groups on Research Awards, Resources, and Advanced Studies and from the FIC representative to the NIH Director's Advisory Council discussions of FIC's World Health Organization Collaborating Center for Research and Training in Biomedicine, Bilateral Agreements in which NIH is involved, stipend levels for FIC research fellowship presentation on the Vaccine Action Program, and a background presentation on John E. Fogarty are also on the agenda. Attendance by the public will be limited to space available.

In accordance with the provisions of Sections 552b(c)(4) and 552(c)(6) of Title 5, U.S. Code of Pub.L. 92–463, the meeting will be closed to the public on January 28, 1986, from 11:30 a.m. to 12:30 p.m., for the review, discussion, and evaluation of individual research fellowship applications.

These applications contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; personal information about individuals associated with the applications.

Ms. Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A Room 607, and 310–496–1491, will provide a summary of the meeting and a roster of the committee members.

Dr. Coralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center, (Executive Secretary) Building 38A Room 607,

telephone (301) 496–1491, will provide substantive program information.

Dated: December 23, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–14 Filed 1–2–86; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Aging; Meeting of National Advisory Council on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Institute National Advisory Council on Aging, (NIA), on February 20–21, 1985, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 20, from 10:30 a.m. until noon for a status report by the Director, National Institute on Aging; and a report on the ad hoc Committee on Program. It will be open to the public on Friday, February 21, from 9:00 a.m. until adjournment for a report on the John Douglas French Foundation for Alzheimer's Disease; a report on the Epidemiology, Demography, and Biometry Program; and a report on the Director's Advisory Committee meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 93–463, the meeting of the Council will be closed to the public on February 20 from 1:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you contact Mrs. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 2C05, Bethesda, Maryland 20892, (301/496–5898), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: December 23, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–15 Filed 1–2–86; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), on February 6–7, 1986, at the National Institutes of Health, Conference Room 6, Building 31–C, 9000 Rockville Pike, Bethesda, Maryland 20892, beginning at approximately 9:00 a.m.

This meeting will be open to the public on February 6 from 9:00 a.m. until recess, and on February 7 from 9:00 a.m. until approximately 10:15 a.m. for discussions of Diagnostic Review Groups and their impact on clinical research; the Small Business Innovation Research Program; supercomputers in biomedical research; and administrative matters such as previous meeting minutes; the Report of the Director, DRR; and Council Operating Procedures. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 7 from 10:15 a.m. until adjournment for the review, discussion, and evaluation of individual grant applications. The applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, Division of Research Resources, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Research Support, National Institutes of Health)

Dated: December 23, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–16 Filed 1–2–86; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A–20236]

Arizona; Conveyance

December 23, 1985.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Inspiration Consolidated Copper Company, P.O. Box 4444, Claypool, Arizona 85532, has purchased by direct sale, at the fair market value of $1,400.00, public land situated in Gila County described as follows:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 14 E.,
Sec. 22, lots 8, 9, and 14;
Sec. 23, lots 1 and 2;
Sec. 26, lots 1, 2, and 3;
Sec. 27, lot 4.

Containing 5.61 acres.

The purpose of the Notice is to inform the public and interested State and local government officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–90 Filed 1–2–86; 8:45am]

BILLING CODE 4310–32–M

[Docket No. I–5054]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that a 271.02 acre withdrawal for the Coiner Watershed Protection Site continue for an additional 30 years. The lands will remain closed to the mining laws but have been and will remain open to mineral leasing.

DATE: Comments should be received by April 3, 1986.

ADDRESS: Comments should be sent to: Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, Idaho State Office, 208 334–1735.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 5522 of August 28, 1975, be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Salmon National Forest

Boise Meridian

Coiner Watershed Protection Site

T. 23 N., 20 E., (Unsurveyed).

Sections 12, 13, and 24 Lemhi Gold Placer and Moose Creek Hydraulic Placer Claims Mineral Survey 3057. Excepting therefrom the following-described property:

A fraction of the Moose Creek Hydraulic Placer Mineral Survey No. 3057, more particularly described as follows, to wit: Commencing at Corner No. 6 of the Moose Creek Hydraulic Placer portion of Mineral Survey No. 3057, run thence S. 0° 10′ W., 525.1 feet to the point of beginning, and the northeasterly corner of the tract of land hereby described; continuing thence S. 0° 10′ W., 335.9 feet; thence N. 89° 50′ W., 650.0 feet, more or less, to a point in the center of Moose Creek; thence northerly along the center of Moose Creek 355.9 feet; thence S. 89° 50′ E., 650.0 feet to the point of beginning. Containing 5.0 acres.

A fraction of the Moose Creek Hydraulic Placer, Mineral Survey No. 3057, more particularly described as follows, to wit: Beginning at Corner No. 7 of the said Moose Creek Hydraulic Placer, run thence N. 89° 50′ W., 503.9 feet; thence N. 0° 10′ E., 518.7 feet; thence S. 89° 50′ E., 503.9 feet to a point on the easterly boundary of the Moose Creek Hydraulic Placer; thence S. 0° 10′ W., along the easterly boundary of the Moose Creek Hydraulic Placer a distance of 518.7 feet to the point of beginning. Containing 6.0 acres.

A fraction of the Moose Creek Hydraulic Placer, Mineral Survey No. 3057, more particularly described as follows, to wit: Commencing at Corner No. 7 of said Moose Creek Hydraulic Placer, run thence N. 0° E., 518.7 feet to the point of beginning and the southeast corner of the tract of land herein described; continuing thence N. 0° 10′ E., 360.0 feet; thence N. 89° 50′ W., 624.9 feet, more or less, to a point in the center of Moose Creek; thence southerly along the center of Moose Creek 369.0 feet, more or less, to a point which lies N. 89° 50′ W., from the point of beginning; thence s. 89° 50′ W., 622.5 feet to the point of beginning. Containing 5.0 acres.

The area described aggregates 271.02 acres more or less in Lemhi County.

The purpose of the withdrawal is to protect existing watershed protection facilities. The withdrawal segregates the land from the operation of the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

Dated: December 24, 1985.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 86–94 Filed 1–2–86; 8:45 am]

BILLING CODE 4310-GG-M

[M-66575]

Montana; Realty Action—Proposed Agricultural Lease

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-66575—Proposed agricultural leasing of public land in Valley County, Montana.

SUMMARY: A parcel of land is being considered for lease to Lyman Pattison under section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732). Leasing of the land will authorize an existing use. The land is described as follow:

Principal Meridian Montana

T. 31 N., R. 39 E.,

Sec. 25, E½SE¼SE¼.

Totaling approximately 14 acres.

This parcel would be offered to the adjacent landowner for direct, noncompetitive lease at no less than fair market rental. The size, configuration and the fence line on the parcel limits other potential uses or users. The general terms and conditions of the lease are found in 43 CFR 2920.7.

The lessee would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease, in accordance with 43 CFR 2920.6.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, Airport Road, Lewistown, Montana 59457. Any adverse comments will be evaluated and the decision to issue a lease affirmed, modified or rejected.

Dated: December 24, 1985.

Glenn W. Freeman,

District Manager.

[FR Doc. 86–79 Filed 1–2–86; 8:45 am]

BILLING CODE 4310-DN-M

[NM 56102]

New Mexico; Issuance of Land Exchange Conveyance; Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to Paragon Resources, Inc., a New Mexico Corporation acting for Public Service Company, a New Mexico Corporation (PNM), on May 31, 1985, for the following described lands (surface estate only) in San Juan County, New Mexico, pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)).

New Mexico Principal Meridian

T. 30 N., R. 15 W.,

Sec. 19, S½S½SE¼NE¼, E½SE¼, and E½NW¼SE¼;

Sec. 20, S½SW¼SW¼NW¼, NW¼SW¼, and S½SW¼.

The area described contains approximately 235.00 acres.

In exchange for these lands, the United States acquired the following described lands (surface estate only) in San Juan County, New Mexico, from Paragon Resources, Inc.

New Mexico Principal Meridian

T. 32 N., R. 7 W.,

Sec. 8, Lots 1, 2, 3, W½SE¼, and E½SW¼.

Containing 270.40 acres, more or less.

LESS AND EXCEPT, HOWEVER, a certain tract of real property being more particularly described as follows:

Beginning at the Northeast corner of the tract herein described, a point in the Colorado/New Mexico State boundary line, whence the North one-quarter (N¼) corner of said Section 8, T. 32 N., R. 7 W., NMPM, bears N. 89°56′00″ E., 606.54 feet distant; THENCE S. 04°10′00″ W., 1442.00 feet to the Southeast corner; THENCE S. 89°56′00″ W., 757.33 feet to the Southwest corner; THENCE N. 04°10′00″ E., 1442.00 feet to the Northwest corner; a point in the Colorado/New Mexico State boundary line; THENCE N. 89°56′00″ E., 757.33 feet along said State boundary line to the

point and place of beginning. Containing 25.00 acres more or less.

T. 31 N., R. 7 W.,
Sec. 11, NE¼;
Sec. 12, SW¼NW¼.
Containing 200.00 acres, more or less.

T. 32 N., R. 7 W.,
Sec. 13, N½SW¼, and NW¼SE¼.
Containing 131.22 acres, more or less;

LESS AND EXCEPT, HOWEVER, a certain tract of real property being more particularly described as follows:

That part of the said NW¼ of the SE¼ described as follows:

Beginning at the Northeast corner of said NW¼SE¼; THENCE N. 85°41' W., along the North line of said NW¼SE¼ 661.65 feet; THENCE S. 0°28' W., 660.00 feet; THENCE S. 85°41' E., 661.65 feet to the East line of said NW¼SE¼; THENCE N. 0°28' E. along said East line of said NW¼SE¼ 660.00 feet to the point of beginning, containing ten (10) acres, more or less.

T. 32 N., R. 7 W.,
Sec. 29, E½SE¼NW¼, NE¼NE¼SW¼, and E½SE¼NE¼SW¼.
Containing 33.865 acres, more or less.

The total area aggregates 600.48 acres more or less.

The purpose of this exchange was twofold: The BLM would acquire private lands on Middle Mesa which would enhance the opportunities to improve both range and wildlife management. Second, the tract selected by Paragon Resources, Inc., a New Mexico Corporation, acting for Public Service Company, a New Mexico Corporation (PNM) was currently being used for evaporation ponds in association with the San Juan Generating Plant. The transfer of this site to PNM would allow them more flexibility in managing the ponds and their associated plant facilities. The public interest was served through completion of this exchange.

At ——— a.m. on ————, 1986, the lands shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to ——— a.m. on ————, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Ownership of the mineral estate has been and remains in the United States in T. 31 N., R. 7 W., NMPM, and ownership of coal estate has been and remains in the United States in T. 32 N., R. 7 W., NMPM.

Dated: December 17, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86-92 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-FB-M

[NM 34104-OK]

Issuance of Disclaimer of Interest to Lands in Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Issue Disclaimer.

SUMMARY: Pursuant to section 315 of the Act of October 21, 1976, 43 U.S.C. 1745, notice is hereby given of intent to disclaim and release all surface interest to the owners of record for the land described.

DATE: For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, 6136 East 32nd Place, Tulsa, Oklahoma, 74135. A decision whether to allow the disclaimer will be made within 45 days following the close of comment period.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, 405-231-5491.

The following is a metes and bounds description of accretion and riparian right to Lot 3, Section 11, T. 22 N., R. 13 W., I.M., Oklahoma, in two parts for those lands available for leasing:

Part One—Beginning at the SE corner of Lot 3, Section 11, from which the corner of Sections 11, 12, 13, and 14 bears S. 47°43' E., 29.64 chs. dist., Thence, W., 1.14 chs. dist., to the SE corner of existing lease No. NM-38432 OK; Thence, N. 18°12' E., along the east boundary of existing lease No. NM-38432 OK, 2.73 chs. dist., to a point intersecting the south boundary of existing lease No. NM-04095959 OK; Thence, S. 71°30' E., along the south boundary of existing lease No. NM-0409595 OK, 1.30 chs. dist., to a point; Thence, S. 23°30' W., 2.37 chs. dist., to the point of beginning, containing 0.30 acres more or less.

Part Two—Beginning at the NW corner of Lot 3, Section 11, from which the corner of Sections 11, 12, 13, and 14 bears S. 57°58' E., 47.19 chs. dist., Thence, along the boundary of existing lease No. NM-38432 OK, N. 0°04' W., 5.78 chs. dist., N. 19°36' E., 5.41 chs. dist., S. 71°00' E., 13.43 chs. dist., S. 78°55' E., 5.40 chs. dist., S. 11°05' W., 3.28 chs. dist., to a point intersecting the north boundary of existing lease No. NM-0409595 OK; Thence, S. 72°30' E., along the north boundary of existing lease No. NM-0409595 OK 1.93 chs. dist., to a point, Thence, N. 23°30' E., 5.71 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River; Thence, N. 56°45' W., perpendicular to the medial line, 22.77 chs. dist., to a point on the medial line; Thence, along the medial line, S. 33°15' W., 1.54 chs. dist., S. 54°27' W., 4.62 chs. dist., S. 79°30' W., 2.46 chs. dist., to a point; Thence, S. 10°30' E., perpendicular to the medial line, 15.23 chs. dist., to the point of beginning, containing 17.70 acres more or less.

The following is a metes and bounds description of accretion and riparian right to Lot 4, Section 11, T. 22 N., R. 13 W., I.M., Oklahoma, in two parts:

Part One—Beginning at the NE corner of Lot 4, Section 11, from which the corner of Sections 11, 12, 13, and 14 bears S. 48°46' E., 26.10 chs. dist.; Thence, N. 40°00' W., along the 1874 meander, 3.58 chs. dist., to the SE corner of Lot 3; Thence, N. 23°30' E., 2.37 chs. dist., to a point intersecting the south boundary of existing lease No. NM-0409595 OK; Thence, along the south boundary of existing lease No. NM-0409595 OK, S. 71°30' E., 1.86 chs. dist., N. 17° 30' E., 5.00 chs. dist., to the NE corner of existing lease No. NM-0409595 OK; Thence, S. 11°54' W., 9.29 chs. dist., to the point of beginning, containing 1.00 acres more or less.

Part Two—Beginning at the NE corner of existing lease No. NM-0409595 OK, from which the corner of Sections 11, 12, 13, and 14 bears S. 33°58' E., 31.71 chs. dist.; Thence, N. 72°30' W., along the north boundary of existing lease No. NM-0409595 OK, 1.34 chs. dist., to a point; Thence, N. 23°30' E., 5.71 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River; Thence, N. 56°45' W., perpendicular to the medial line, 22.77 chs. dist., to a point on the medial line; Thence, N. 33°15' E., along the medial line, 5.23 chs. dist., to a point; Thence, S. 56°45' E., perpendicular to the medial line, 20.92 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River; Thence, S. 11°54' W., 11.27 chs. dist., to the point of beginning, containing 11.91 acres more or less.

The following is a metes and bounds description of accretion and riparian right to Lot 5, Section 11, T. 22 N., R. 13 W., I.M., Oklahoma:

Beginning at the NE corner of Lot 5, Section 11, from which the corner of Sections 11, 12, 13, and 14 bears south, 24.00 chs. dist., Thence, N. 23°00' W., 53.99 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River; Thence, N. 69°00' W., perpendicular to the medial line, 10.00

chs. dist., to a point on the medial line; Thence, along the medial line, S. 21°00' W., 3.54 chs. dist., S. 19°00' W., 5.38 chs. dist., S. 5°17' E., 5.86 chs. dist., S. 2°30' E., 12.31 chs. dist., S. 33°15' W., 1.54 chs., to a point; Thence, S. 56°45' E., perpendicular to the medial line, 20.92 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River: Thence, S. 11°54' W., 20.56 chs. dist., to the NW corner of Lot 5, Section 11; Thence, along the 1874 meanders, S. 40°00' E., 1.54 chs. dist., N. 88°00' E., 9.00 chs. dist., N. 55°00' E., 12.18 chs. dist., to the point of beginning, containing 91.24 acres more or less.

The following is a metes and bounds description of accretion and riparian right to Lot 1, Section 12, T. 22 N., R. 13 W., I.M., Oklahoma:

Beginning at the NW corner of Lot 1, Section 12, from which the corner of Sections 11, 12, 13, and 14 bears south, 24.00 chs. dist., Thence, N. 23°00' W., 53.99 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River; Thence, N. 69°00' W., perpendicular to the medial line, 10.00 chs. dist., to a point on the medial line; Thence, along the medial line, N. 21°00' E., 3.03 chs. dist., N. 8°54' E., 3.90 chs. dist., 5°00' E., 5.23 chs. dist., N. 30°00' E., 7.69 chs dist., N, 25°00' E., 6.15 chs. dist., N. 30°00' E., 5.38 chs. dist., N. 37°00'E., 2.46 chs. dist., N. 57°30' E., 2.77 chs. dist., to a point; Thence S. 32°30' E., perpendicular to the medial line, 8.46 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River; Thence, S. 22°00' E., 82. 83 chs. dist. to the NE corner of Lot 1, Section 12; Thence, S. 85°30' W., along the 1874 meanders, 20.31 chs. dist., to the point of beginning, containing 170.87 acres more or less.

The following is a metes and bounds description of accretion and riparian right to Lot 2, Section 12, T. 22 N., R. 13 W., I.M., Oklahoma:

Beginning at the NW corner of Lot 2, Section 12, from which the corner of Sections 11, 12, 13, and 14 bears S. 38°21' W., 32.63 chs. dist., Thence, along the 1874 meanders, N. 85°30' E., 8.09 chs. dist., S. 82°15' E., 12.31 chs. dist., to the NE corner of Lot 2, Section 12; Thence, N. 16°00' W., 75.98 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River; Thence, N. 43°00' E., perpendicular to the medial line 5.85 chs. dist., to a point on the medial line; Thence, along the medial line, N. 47°00' W., 2.92 chs. dist., N. 61°00' W., 7.85 chs. dist., N. 72°00' W., 15.38 chs. dist., West, 7.00 chs. dist., S. 80°30' W., 5.08 chs. dist., S. 57°30' W., 3.85 chs. dist., to a point; Thence, S. 32°30' E., perpendicular to the medial line, 8.46 chs. dist., to a proportionate point on the 1954 right bank of the Cimarron River; Thence, S. 22°00' E., 82.83 chs. dist., to the point of beginning, containing 215.80 acres more or less.

The following is a metes and bounds description for the remaining portion of Lot 5, Section 12, T. 22 N., R. 13 W., I.M., Oklahoma, plus accretion and riparian right thereto:

Beginning at the corner of Sections 1, 6, 7, and 12, identical with the NE corner of Lot 5, Section 12; Thence, W., between Sections 1 and 12, 20.00 chs. dist., to the E. 1/16 Section corner; Thence, S., along the west boundary of Lot 5, Section 12, 8.48 chs. dist., to a point on the 1954 east bank of the Cimarron River; Thence, S. 40°00' W., perpendicular to the medial line, 7.25 chs. dist., to a point on the medial line; Thence, along the medial line, S. 50°00' E., 1.39 chs. dist., S. 52°00' E., 17.27 chs. dist., S. 47°48' E., 3.43 chs. dist., S. 61°00' E., 6.01 chs. dist., to a point; Thence, N. 29°00' E., perpendicular to the medial line, 5.40 chs. dist., to a proportionate point on the 1954 east bank of the Cimarron River; Thence, N. 8°00' W., 3.08 chs. dist., to a point on the 1874 meander corner between Sections 7 and 12; Thence, N. 23.00 chs. dist., to the point of beginning, containing 52.42 acres more or less.

The following is a metes and bounds description for the remaining portion of Lot 6, Section 12, T. 22 N., R. 13 W., I.M., Oklahoma, plus riparian rights thereto:

Beginning at the E 1/16 Section corner between Sections 1 and 12, from which the corner of Sections 1, 6, 7, and 12 bears east, 20.00 chs. dist., Thence, W., between Sections 1 and 12, 9.91 chs. dist., to a point on the 1954 east bank of the Cimarron River; Thence, S. 48°45' W., perpendicular to the medial line, 6.94 chs. dist., to a point on the medial line; Thence, along the medial line, S. 41°15' E., 3.70 chs. dist., S. 50°45' E., 3.50 chs. dist., S. 50°00' E., 6.94 chs. dist., to a point; Thence, N. 40°00' E., perpendicular to the medial line, 7.25 chs. dist., to a point on the 1954 east bank of the Cimarron River; Thence, N., 8.48 chs. dist., to the point of beginning, containing 14.07 acres more or less.

The foregoing descriptions are based on survey data from the Plat of T. 22 N., R. 13 W., I.M., approved February 28, 1874 and an aerial photo flown July 17, 1954;

After review of the official records, it is the position of the Bureau of Land Management that:

1. The land applied for is accreted by prolonged slow river movement on the south bank of the Cimarron River.

2. It has been determined that the United States has no surface interest in said land and a disclaimer should be issued, excepting therefrom:

a. All existing rights-of-way of record.

b. All minerals will be reserved to the United States in accordance with section 209(a) of the Federal Land Policy and Management Act of 1976.

c. Issued oil and gas leases will be protected.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86-91 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-FB-M

Shoshone District, ID; Emergency Closure; Public Lands: Southern Portion of Shoshone BLM District

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency Closure of Public Lands (Southern Portion of Shoshone BLM District).

SUMMARY: Notice is hereby given that effective immediately all public lands located in the southern portion of the Shoshone BLM District are closed to motorized vehicles. The closed area is bounded and generally described as follows:

Beginning at the King Hill Creek and the Snake River confluence, located in Section 14, Township 5 South, Range 10 East, B.M., then north to the Township line between Township 3 South and Township 4 South, then east along township line to Highway 75, then northeast on Highway 75 to the township line between Township 2 South and Township 3 South, then east along township line to Highway 93, then southwest on Highway 93 to Shoshone, then east on Highway 24 to the 1650 Road located in Section 24, Township 6 South, Range 20 East, B.M., then south on 1650 Road to Interstate 84, then west to Highway 50, then south to Hansen Bridge on the Snake River, then west along the Snake River to King Hill Creek, the point of beginning.

All Federal lands administered by the Bureau of Land Management within the above described area are closed to motorized vehicles from the date of this notice until March 1, 1986.

Persons exempt from this closure are federal, state, and local government personnel on official duty, emergency service personnel including medical, and search and rescue, utility services, and all other licensed/permitted individuals approved by the authorized officer.

The described area is currently experiencing high concentrations of antelope, deer and elk due to early winter snow amounts and extreme low temperatures. These big game animals are very susceptible to disturbances.

The purpose of this closure is to protect wintering big game from motor vehicles.

The authority for this closure is 43 CFR 8364.1. The closure will remain in effect until March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Robert D. Cordell, Bennett Hills Resource Area Manager or Ervin R. Cowley, Monument Resource Area Manager, P. O. Box 2B, Shoshone, Idaho 83352, Telephone (208) 886-2206.

Dated: December 26, 1985.

Jon Idso,

District Manager.

[FR Doc. 86-88 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-85-M

[OR 32760]

Realty Action; Exchange of Lands

The following described lands have been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN

	Acreage
Harney County Tracts	
T. 30 S., R. 31 E.,	
Sec. 14: NW¼SW¼NW¼, S½SW¼NW¼, W½SW¼	110.00
Sec. 15: SE¼NE¼, E½SE¼	120.00
Sec. 23: W½NE¼, SE¼NE¼, NW¼, E½SW¼, SE¼	520.00
Sec. 24: SW¼NW¼, N½SW¼, SE¼	280.00
Sec. 25: SW¼, S½SE¼	240.00
Sec. 26: NE¼, E½NW¼, E½SW¼, SE¼	480.00
Sec. 35: NE¼NE¼	40.00
Sec. 36: All	640.00
T. 30 S., R. 32 E.,	
Sec. 19: Lot 4, SE¼SW¼	79.93
Sec. 28: SW¼NW¼, SW¼, SW¼SE¼	240.00
Sec. 29: S½NE¼, N½SW¼, SE¼	320.00
Sec. 30: Lot 4, NW¼NE¼, S½NE¼, NE¼NW¼, SE¼NW¼ (Mineral Estate Only), SE¼SW¼, NE¼SE¼	320.81
Sec. 32: E½NE¼, NW¼NE¼	120.00
Sec. 33: W½NE¼, NW¼, N½SW¼, NW¼SE¼	360.00
T. 31 S., R. 32½ E.,	
Sec. 16: NE¼NE¼, S½NE¼, SE¼	260.00

The area described aggregates approximately 4,150.74(±) acres in Harney County, Oregon. In exchange for all or some of these lands the United States will acquire the following described private land from Hammond Ranches, Inc. (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN

	Acreage
T. 31 S., R. 32¾ E.,	
Sec. 10: NE¼NE¼, NE¼SE¼, S½SE¼	160.00
Sec. 11: SW¼NE¼, NW¼NW¼, S½NW¼, S½	480.00
Sec. 12: NW¼SW¼, S½SW¼	120.00
Sec. 14: NW¼, N½SW¼	240.00

WILLAMETTE MERIDIAN—Continued

	Acreage
Sec. 15: NE¼, NE¼SE¼	200.00
Sec. 21: SW¼NE¼, NE¼SE¼	80.00
T. 32 S., R. 32¾ E.,	
Sec. 18: SE¼SW¼	40.00

The area described aggregates approximately 1320.00 (±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and riparian habitat.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or money will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1980.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720.

For a period of 45 days after the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: December 13, 1985.

Thomas R. Thompson, Jr.,

Associate District Manager.

[FR Doc. 86-93 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-33-M

Availability of the Final Northwest Area Noxious Weed Control Program Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Northwest Area Noxious Weed Control Program Enviromental Impact Statement (Final EIS).

SUPPLEMENTARY INFORMATION: Pursuant to section 102(c) of the National Environmental Policy Act of 1969, BLM has prepared a Final EIS on Noxious Weed Control in the states of Idaho, Montana, Oregon, Washington and Wyoming.

The Proposed Action employs all methods of weed control. Average annual treatments would involve approximately 21,200 acres of herbicide treatment, 300 acres of manual treatment, 800 acres of mechanical treatment, and 21,700 acres of biological treatment. Alternatives to the Proposed Action include no aerial application of herbicides, no herbicides, and no control action at all. The Final also includes a "worst case analysis", analyzing the worst possible effects on human health of using the herbicides 2,4-D, picloram, and glyphosate.

A 60-day public review and comment period on the Draft EIS ended on July 31, 1985. A total of 72 comment letters were received and have been included in the Final EIS along with BLM's responses to those comments. Text changes in response to public and peer review comments have been incorporated into the Final EIS.

A limited number of individual copies of the Final EIS may be obtained upon request to any BLM District or State Office in the five states. Reading copies are also available.

FOR FURTHER INFORMATION CONTACT: Gregg Simmons (935), Bureau of Land Management, P.O. Box 2965, Portland, OR 97208. Telephone (503) 231-6272.

Dated: December 18, 1985.

Edward S. Lewis III,

Acting State Director.

[FR Doc. 86-61 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1085, Block 75, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on December 26, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised section 250.34 of Title 30 of the CFR.

Dated: December 27, 1985.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-84 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the Grand Isle Block 16 Federal Unit, Agreement No. 14-08-0001-2932, submitted on December 19, 1985, a proposed annual Development Operations Coordination Document describing the activities it proposes to conduct on the Grand Isle Block 16 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 26, 1985.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-86 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-MR-M

Procedures for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Proposed Modification to Notice to Lessees-5.

SUMMARY: The Minerals Management Service (MMS) proposes to modify Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Lease (NTL-5) to provide more flexibility in valuing for royalty purposes natural gas produced from onshore Federal and Indian leases. The changes proposed to NTL-5 would permit MMS to value natural gas using the full range of its authority under the royalty valuation regulations rather than under the more restrictive provisions of NTL-5.

DATES: Comments must be delivered or postmarked no later than February 3, 1986.

ADDRESS: Comments should be sent to: Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 651, Denver, Colorado 80225, Attention: Dennis Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, telephone: (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this modification to Notice to Lessees are Carol Sampson, Washington Liaison Office, Minerals Management Service, and Peter Schaumberg, Office of Solicitor, Energy and Resources.

This proposed notice would modify Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL-5) (42 FR 22610, May 4, 1977). NTL-5 is a directive issued by the U.S. Geological Survey, and is now the responsibility of MMS. It states how the agency will exercise the broad authority granted by agency regulations (*e.g.*, 30 CFR 221.47 (now § 206.103)) in valuing natural gas for royalty purposes in specific situations. NTL-5 is applicable to natural gas produced on all onshore Federal lands and all Indian lands, except Osage and Jicarilla Apache Indian Reservation lands. (*See* 42 FR 40263, August 9, 1977).

NTL-5 was issued, among other reasons, "in recognition of the increasing value of natural gas." (42 FR 22610, May 4, 1977). It explains how the broad discretion of 30 CFR 221.47 (now § 206.103) would apply to that type of escalating market situation, selecting from among the various alternative valuation methods of § 221.47 those which were best suited to the market

situation that existed in 1977. In the last 2 years, however, that situation has changed since gas prices have decreased significantly and onshore gas markets are subject to sudden erratic fluctuations. NTL–5 does not adequately provide for dealing with these fluctuations nor with the special marketing processes now being used by gas marketers to deal with current market conditions. As a result, unintended disparities between the royalty value of gas and its market value have been created. This proposed revision would modify NTL–5 to give MMS the needed flexibility to consider the changing natural gas market in valuing natural gas for royalty purposes.

The modifications proposed here would affect two substantive provisions of NTL–5: the "Redetermination of Royalty Values" and "Effective Dates" parts of sections I. and II. (specifically, sections I.B., I.C., II.B., and II.C.). Section I.B would be modified by adding a proviso which would allow MMS to redetermine a base value established pursuant to the existing provisions of NTL–5 according to any method permitted by the regulations governing gas valuation (*e.g.* 30 CFR 206.103 for Federal lands, and 25 CFR 211.13 for Indian lands). The modifications would permit MMS to again exercise the full breadth of its discretion in valuing gas where circumstances so warrant. However, use of this authority would remain discretionary, whereas most of the existing provisions of NTL–5 would stay in effect.

MMS would have the authority to apply this proviso to production months beginning on or after the effective date of the final notice, regardless of whether MMS previously has established or redetermined the royalty value of the gas or regardless of when the well was commenced. The proviso's purpose is to give MMS the flexibility to ensure that the value for royalty purposes reflects market conditions. Thus, it specifies that MMS may use any method allowed by the gas valuation regulations in 30 CFR and 25 CFR because those sections, unlike NTL–5, give MMS the latitude to respond to any changing market. The particular method MMS will use in a given situation will be dictated in large part by specific market conditions which exist at any given time.

MMS also is considering as an alternative to make this provisio effective retroactive to March 1, 1984. MMS selected that date because it generally marks the point at which gas market conditions changed, necessitating a modification to NTL–5. By this date, special marketing programs (SMPs) and the widespread application of "market out" provisions in contracts were becoming prevalent in the onshore gas market as it continued to soften. Further, the Federal Energy Regulatory Commission (FERC) had begun to take specific measures to deal with the problems through a variety of regulatory initiatives. MMS specifically requests comments on whether the modification to NTL–5 should be retroactive, and, if so, which date.

The adjustments to base values authorized by this proposed modification to NTL–5 would not be automatic. Lessees would continue to be governed by the existing valuation provisions of NTL–5 until MMS approved an adjusted base value as a result of changed market conditions.

MMS also proposes to modify the "Effective Dates" provisions of section I.C. of NTL–5. This modification would be designed to implement the same proposes embodied in the proviso described above. It would enable MMS to make any redetermined base values set pursuant to section I.B. effective on the date market conditions warrant such a redetermination. It gives MMS the flexibility to react to changing conditions as they occur.

The proposed modifications to sections II.B and II.C are designed to accomplish the same purposes as the amendments to sections I.B. and I.C. They are intended to give MMS the flexibility permitted by the regulations to redetermine royalty value in accordance with market conditions.

Additionally, these modifications will allow MMS to apply its regulatory scheme consistently since the offshore valuations already provide MMS the ability to deal with changing gas market conditions.

As an alternative to the above proposal, MMS also may rescind NTL–5 in its entirety or in part. If NTL–5 is rescinded completely, valuation would be based solely upon the regulations in 30 CFR and 25 CFR. Since any valuation method prescribed in NTL–5 is similarly authorized by the underlying regulations upon which NTL–5 is based, rescission of all or part of NTL–5 would not diminish MMS' royalty valuation authority. Like the principal proposal this alternative would give MMS the flexibility to deal with changing market conditions in a way which NTL–5 in its present form cannot.

MMS would like comments on whether this altenative is preferable to the main proposal. If comments address partial rescission of NTL–5, the comments should identify which sections should be rescinded and also whether any minor modifications would be necessary to the remaining provisions to accommodate the partial rescission.

MMS is preparing comprehensive new regulations for product valuation which would replace the existing provisions in 30 CFR, 25 CFR and the NTL's. The changes proposed today are not a substitute for those new regulations. Rather, they are an attempt to remedy on a short-term basis an existing problem while the comprehensive regulations are undergoing preparation and review.

Executive Order 12291 and the Regulatory Flexibiltiy Act

The Department has determined that this rule is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The revisions to NTL–5 will impact arm's length contracts which represent about 20 percent of all onshore gas sales. The net effect of this proposal will result in some reduction in royalty revenues but is not expected to be significant. Therefore, a regulatory impact is not required.

Paperwork Reduction Act of 1980

This rule does not contain information collecton requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects in 30 CFR Part 206

For the reasons set out in this preamble, it is proposed to modify Notice to Lessees–5, as follows.

Dated: December 2, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management

Benchmarks, Beneficial use, Gas and associated products, Gas sales contracts, Gross proceeds, Posted prices, Product valuation, Reporting requirements, and Royalties.

Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL–5) is proposed to be amended as follows:

I. INTERSTATE SALES SUBJECT TO THE PRICE JURISDICTION OF THE FEDERAL POWER COMMISSION (FPC)—REPLACED BY THE FEDERAL ENERGY REGULATORY COMMISSION (FERC)

* * * * *

B. Redetermination of Royalty Values

The base value established for royalty purposes shall be redetermined by the Minerals Management Service (MMS) whenever necessary to conform with any subsequent FPC (now FERC) ceiling or minimum rate which may be prescribed for the same vintage (now category) gas; *provided,* however, that for production months beginning on or after [insert first day of the month following the effective date of the final notice] when necessary to reflect market conditions, the MMS may adjust a base value estabished by section I.A., or may further adjust a base value redetermined under this section, to another value authorized by regulations in Title 25 or 30, *Code of Federal Regulations,* as applicable; *provided further,* that for sales from wells commenced prior to June 1, 1977, and which are subject to an arm's-length contract entered into prior to that date, the redetermination or readjustment of the base value will consider the extent to which the lessee or operator is entitled to collect a higher rate under the terms or the applicable contract or FPC (now FERC) ruling.

C. Effective Dates

All inital base values established will be effective as of the date of first production or June 1, 1977, whichever is later. All redetermined base values will be effective as of the date the FPC (now FERC) prescribes or permits a revised price. All adjustments to base values will be effective as of the date specified by the MMS.

* * * * *

II. INTRASTATE AND OTHER SALES OR DISPOSITION NOT SUBJECT TO PRICE JURISDICTION OF THE FPC (NOW FERC)

* * * * *

B. Redetermination of Royalty Values

The base value established for royalty purposes shall be redetermined by the MMS whenever necessary to reflect market conditions. When the base value is redetermined for production months beginning before [insert first day of the month following the effective date of the final notice] it will be based on the higher of:

1. The escalated price received or receivable by the lessee or operator under the provisions of the applicable sales contract, or

2. The highest price paid or offered for a majority of like quality gas produced in the field or area. Provided, however, that if such information is not readily available or the highest price paid or offered for said majority of like quality production does not reflect the reasonable value of the gas, the MMS may redetermine the base value as the highest applicable national rate then currently established by the FPC (now FERC) for the same vintage (now category) gas.

For production months beginning on or after [insert first day of the month following the effective dates of the final notice], the MMS shall redetermine the base value to a value authorized by the regulations it Title 25 or 30, *Code of Federal Regulations* as applicable.

Any readjusted base value for sales from wells commenced prior to June 1, 1977, and which are subject to an arm's-length contract made pursuant to a contract entered into prior to that date, will consider the extent to which the lessee or operator is entitled to collect a higher rate pursuant to the provisions of the applicable contract.

C. Effective Dates

1. All initial base values established will be effective as of the date of first production or June 1, 1977 whichever is later.

2. Those redetermined base values established by section II.B. in accordance with escalation provisions of a gas sales contract will become effective on the date specified in the contract. For other redeterminations of base values made pursuant to section II.B., the effective date will be the first day of the month next following the month in which changing market conditions warrant a redetermination under this provision, as determined by MMS.

[FR Doc. 86-10 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5219, Block 145, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on December 23, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised section 250.35 of Title 30 of the CFR.

Dated: December 26, 1985.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-85 Filed 1-2-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Sun Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sun Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4268, Block 648, West Cameron Area, offshore

Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on December 24, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/ Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised section 250.34 of Title 30 of the CFR.

Dated: December 26, 1985.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–85 Filed 1–2–86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 334 (Sub-7)]

Suspension of Car Hire Updates

AGENCY: Interstate Commerce Commission.

ACTION: Notice of suspension.

SUMMARY: The Commission has suspended the 1984 update of car hire charges and all subsequent updates pending completion of Ex Parte No. 334 (Sub-No. 6), *Review of Car Hire Regulation,* subject to the right of affected parties to petition for general or selective future updates based on the supply and demand of various car types. The requests of Brae Corporation and Itel Rail Corporation that the Commission adopt alternatives to a simple suspension are denied for the reasons set forth in the decision.

DATES: The decision suspending the 1984 and subsequent car hire updates is effective February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision including a Final Regulatory Flexibility Analysis relating to impacts of the suspension on small entities. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10327(g), and 11122.

Decided: November 25, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a commenting expression. Chairman Taylor and Commissioner Simmons dissented in part with separate expressions.

James H. Bayne,

Secretary.

[FR Doc. 86–2 Filed 1–2–86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30762]

Consolidated Rail Corp.; Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts, under 49 U.S.C. 10505, the assumption by Consolidated Rail Corporation of obligations or liabilities related to $4 million in bonds to be issued by the Ohio Air Quality Development Authority.

DATES: This exemption is effective on December 27, 1985. Petitions to reopen must be filed by January 23, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30762 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: John F. DePodesta, 1777 F Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 22?9, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 27, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Lamboley dissented in part with a separate expression. Commissioner Taylor did not participate. Commissioner Andre was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 86–4 Filed 1–2–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Response to Comments on Changes in Local Area Unemployment Statistics (LAUS) Procedures

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Changes in local area unemployment statistics methodology.

SUMMARY: Based on the comments received during the **Federal Register** comment period, the Bureau of Labor Statistics will introduce updates and methodological improvements cited in its **Federal Register** Notice, published October 31,1985 (50 FR 45505). The updates and improvements include the introduction of 1980 Census data in the estimation of agricultural employment and in the adjustment of State and area employment to place-of-residence, and methodological revisions in estimation of all-other nonagricultural employment and the estimation of unemployed delayed and never filers.

FOR FURTHER INFORMATION CONTACT: Sharon Brown, 202–523–1807.

Dated at Washington, DC, this 30th day of December 1985.

Janet L. Norwood,

Commissioner.

[FR Doc. 86–52 Filed 1–2–86; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Agenda for Public Meetings on Administrative Financing of State Employment Security Agency Programs; Extension of Response Time for Written Comments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of agenda for public meetings and extension of time for written comments.

SUMMARY: This notice provides an agenda for public meetings scheduled in Dallas, Texas, on January 14, 1986, Chicago, Illinois, on January 15, 1986, Washington, DC, on January 16, 1986, and in San Francisco, California, on January 23, 1986. These meetings are being conducted to solicit the views of a wide range of individuals and organizations who may have an interest in administrative financing of the State Employment Security Agencies (SESA).

The agenda has been established through consultation with representatives of organizations and individuals interested in SESA administrative financing. Specific details are included in supplementary information. Individual meetings will be structured to provided time for problem identification and time to develop short-range and long-range solutions.

Written comments were requested in the earlier **Federal Register** notice. These were due by January 17, 1986. This date is being extended to January 24, 1986.

DATE: Written comments must be received by close of business January 24, 1986.

ADDRESS: Submit written comments to Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street NW., Washington, DC 20213. Telephone: 202–376–6636.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street NW., Washington, DC 20213. Telephone: 202–376–6636.

SUPPLEMENTARY INFORMATION: The proceedings for the Administrative Finance Initiative public meetings will be structured to include a brief introduction and will emphasize problems identification, short-range solutions and long-range solutions.

Within this structure, the following subject areas have been identified by Washington-based interest groups as important for consideration:

Agenda Subjects/Questions

1. *Problems:* What problems exist with the current SESA administrative financing system?

2. *Short-Term Solutions:* If short-term changes are needed, what are they and can they be accomplished within existing legislative authority in time for the FY 1987 allocation process?

3. *Long-Term Solutions:* If long-term changes are needed, what are they? What reactions do commenters have to proposals to devolve administrative control and financing totally to States?

4. *Specific Administrative Finance Questions:* a. Division of Responsibilities: Are adjustments needed in the distribution of responsibilities between the State and Federal components?

b. Budget Formulation and Allocation: If revisions are made to budget formulation and to the allocation formula, which of the following principles should be included: Use of objective, publicly available data? Consistency between budget formulation and allocation? Incentives for improving efficiency and performance? Stability of resource levels, especially contingency? Differential treatment for State-specific characteristics such as productivity factors, salary rates and work hours? Simple versus complex formulas? Measures of program quality and performance in providing services to claimants, employers, and the public? Other items?

c. Financial Management: Once resources are made available: What, if any, specific adjustments are needed in control and accounting of administrative grants? Financial management and reporting of administrative grants? Reporting requirements? Carry-forward provisions? Contingency financing? Other items?

d. Other: What other specific items or subjects relating to this issue should be considered?

This agenda is provided to assist participants to prepare for the public meetings. It does not necessarily include all subject matter which may be discussed at the meetings. Participants are encouraged, but not required, to structure their comments along these general outlines.

Signed at Washington, DC this 26th of December 1985.

[FR Doc. 86–1 Filed 1–2–86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee; Meeting

In accordance with the Arctic Research and Policy Act, Pub. L. 98–373, the National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date and time: February 3, 1986, 9:30 a.m.

Place: National Science Foundation, Room 540, 1800 G Street, NW., Washington, DC.

Type of meeting: Open—entire meeting except for discussion of President's FY 1987 Budget prior to release.

Contact person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, DC 20550. Telephone: (202) 357–7766.

Purpose of committee: The Interagency Arctic Research Policy Committee was established by Pub. L. 98–373, the Arctic Research and Policy Act, to survey arctic research, help determine priorities for future arctic research, assist in the development of a national arctic research policy, prepare a single, integrated multi-agency budget request for arctic research, develop a 5-year plan to implement national arctic research policy, and facilitate cooperation in and coordination of arctic research.

Agenda:

9:30—Executive Session, FY 1987 Budget
10:00—Open Session, Welcome and Introduction
10:05—Motion to Establish Arctic Research Policy
10:25—Requirements and Work Plan, Progress Report
10:50—Message from Chairman, Arctic Research Commission
11:00—Public Participation Period

Public participation: Members of the public are invited to submit written comments to the contact person listed above prior to the meeting. Written comments received in advance of the meeting will be distributed to Committee representatives for consideration and acknowledgement.

Committee meetings are not designed as public hearings and will not normally receive verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to 5 minutes each. An invitation to address the Committee is contingent upon advance submission of the proposed

statement and a determination by the Committee that such statement is relevant and appropriate to the agenda at that particular meeting. The texts of such statements shall not exceed 5 double-spaced typed pages each.

Peter E. Wilkniss,

Director, Division of Polar Programs.

[FR Doc. 86-97 Filed 1-2-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Availability of FY 1986 Funds for Financial Assistance To Enhance Technology Transfer and Dissemination of Nuclear Energy Process and Safety Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research announces proposed availability of FY 1986 funds to support professional meeting, symposia, conferences, national and international commissions and publications for the expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research necessary to provide a technology base to assess the safety of nuclear power (hereinafter called project).

Projects will be funded through grants.

EFFECTIVE DATE: October 1, 1985 through September 30, 1986.

ADDRESS: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: The cognizant NRC grant official is Mrs. Patricia Smith, telephone (301) 492-4294.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of This Announcement

Pursuant to sections 31.a and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit institutions, State and local Governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research program. The program includes, but is not limited to, support of professional meetings, symposia, conferences, national and international commissions, and publications. The primary purpose of this will be to stimulate research to provide a technological base for the safety assessment of systems and subsystems technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to enlarge the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety.

B. Eligible Applicants

Educational institutions, nonprofit entities, State and local governments and professional societies are eligible to apply for a grant under this announcement.

C. Research Proposals

A research proposal should describe: (i) The objectives and scientific significance of the proposed meeting, symposium, conference, or commission; (ii) the methodology to be proposed or discussed, and its suitability; (iii) the qualifications of the participants and the proposing organization; and (iv) the level of financial support required to perform the proposed effort.

Proposals should be as brief and concise as is consistent with communication to the reviewers. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local Governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A-102, Attachment M. Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated on OMB Circular A-110, Attachment M.

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

31. Cover Page

The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates of Conferences, Symposium, Workshop, etc.;

Name of Principal Participants;

Total Cost of Proposal;

Period of Proposal;

Organization or Institution and Department;

Required Signatures:

Principal Participants:

Name:_____
Date:_____
Address:_____
Telephone No._____

Required Organization Approval:

Name:_____
Date:_____
Address:_____
Telephone No._____

Organization Financial Officer:

Name:_____
Date:_____
Address:_____
Telephone No._____

2. Project Description

Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding.

Applicants must identify other proposed sources of financial support for a particular project.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) Project Goals and Objectives

The project's objectives must be clearly and unambiguously stated.

The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) Project Outline

The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) Project Benefits

The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) Project Management

The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) Project Costs

Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A-122; Educational Institutions shall adhere to the cost principles set forth in OMB Circular A-21; and state and local Governments shall adhere to the cost principles set forth in OMB Circular A-87.

The proposal must provide a detailed schedule of project costs, identifying in particular:

(1) Salaries—in proportion to the time or effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note.—Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

D. Proposal Submission and Deadline

This program announcement is valid for the period of October 1, 1985, to September 30, 1986. Proposal submissions shall be one signed original and six copies.

E. Funds

For Fiscal Year 1986, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research anticipates making $75,000–$100,000 available for funding the project(s) mentioned herein.

The NRC anticipates that approximately 5 to 10 projects will be funded. Further, the NRC anticipates that its averge support will be $5,000–$15,000 per project.

F. Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

G. Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge;

2. Clarity of statement of objectives, methods, and anticipated results;

3. Range of issues covered by the meeting agenda;

4. Qualifications and experience of project speakers; and

5. Reasonableness of estimated cost in relation to anticipated results.

H. Disposition of Proposals

Notification of award will be made by the Grants Officer and organizations whose proposals are unsuccessful will be so advised.

I. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, AR-2223, Office of Administration, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Room 2223, 4550 Montgomery Avenue, Bethesda, MD 20814.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applications.

Dated at Washington, DC, this 27th day of December 1985.

For the U.S. Nuclear Regulatory Commission.

Ronald D. Thompson,

Chief, Technical Contracts Branch, Division of Contracts, Office of Administration.

[FR Doc. 86-103 Filed 1-2-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-14555]

Application and Opportunity for Hearing; J.C. Penney Co.

December 27, 1985.

Notice is hereby given that J.C. Penney Company, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the proposed successor trusteeship of Chemical Bank (the "Trust Company") under an existing indenture of the Applicant, and the trusteeship of Chemical Bank under four other existing indentures of the Applicant are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under any of the Applicant's indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) (a) The Applicant had outstanding as of October 26, 1985 $72,457,000 of its 8⅞% Sinking Fund Debentures Due 1995 (the "1995 Debentures") issued under an indenture dated as of July 15, 1970 (the "1970 Indentures"), between the Applicant and First National City Bank (now Citibank, N.A.) ("Citibank") which was qualified under the Act. The 1995 Debentures were registered under the Securities Act of 1933.

(2) The Applicant had outstanding as of October 26, 1985 $200,000,000 of its 11.50% Sinking Fund Debentures Due 2010 and $150,000,000 of its 10.75% Notes Due 1990 (collectively the "1980 Securities"), each issued under an indenture dated as of June 15, 1980 (the "1980 Indenture") between the Applicant and Chemical which were qualified under the Act. The 1980 Securities were registered under the Securities Act of 1933.

(3) The Applicant had outstanding as of October 26, 1985 $87,129,491 of its 6% Debentures Due 2006 and $123,537,832 of its Zero Coupon Notes Due 1989 (collectively the "1981 Securities"), each issued under an indenture dated as of May 1, 1981 (the "1981 Indentures") between the Applicant and Chemical which were qualified under the Act. The 1981 Securities were registered under the Securities Act of 1933. The 1980 Indentures and the 1981 Indentures are hereinafter called the "Chemical Indentures". The 1970 Indenture and the Chemical Indentures each contain the

provisions required by section 310(b)(1)(ii) of the Act.

(4) The Applicant proposes to appoint Chemical as successor trustee under the 1970 Indenture.

(5) The Applicant is not in default under any of the indentures.

(6) The Applicant's obligations under the indentures and the debentures and notes issued thereunder are wholly unsecured and rank *pari passu inter se*. There are no material differences between the 1970 Indenture and the Chemical Indentures except for variations as to aggregate principal amounts, dates of issue, maturity and interest payment dates, interest rates, redemption prices and sinking fund provisions.

(7) In the opinion of the Applicant, the provisions of the aforementioned indentures are not so likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the debentures or notes issued under such indentures to disqualify Chemical from acting as successor trustee under the 1970 Indenture and trustee under the Chemical Indentures.

(8) The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Ruled of Practice of the Commission with respect to its application. For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14555, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Notice is Further Given that any interested person may, not later than January 21, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after such date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-20 Filed 1-2-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14876; (File No. 812-6225)]

Societe Generale (Canada); Application for an Order Exempting Applicant From all Provisions of the Act

December 26, 1985.

Notice is hereby given that Societe Generale (Canada) ("Applicant"), c/o Troland S. Link, Esq., Davis Polk & Wardwell, One Chase Manhattan Plaza, New York, New York 10005, filed an application on October 16, 1985, and an amendment thereto on December 6, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant represents that it is a Canadian chartered bank pursuant to the Bank Act of Canada, that it is subject to extensive and detailed regulation under Canadian banking law, and that as of October 31, 1984, its total assets were Can. $658,965,467, with approximated authorized capital of Can. $40,000,000 and paid up capital of Can. $30,000,000. Applicant further represents that it is wholly-owned by Societe Generale ("SoGen"), a large French bank subject to extensive regulation under French banking law and other applicable laws and regulations to which it is subject by virtue of its worldwide activities. According to the application, as of December 31, 1984, SoGen had approximated assets of FF836,000,000,000 deposits of FF797,000,000,000, and equity capital of FF39,000,000,000.

Applicant presently proposes to issue and sell prime quality commercial paper (the "Notes") in minimum denominations of $100,000 through major United States commercial paper dealers. Applicant represents that the Notes will be sold only to institutional investors and other entities and individuals that ordinarily purchase commercial paper in the United States commercial paper market and will not be offered or sold to the general public. The Notes will be direct liabilities of the Applicant, and will rank *pari passu* among themselves and with all other unsecured unsubordinated indebtedness (including deposit liabilities) of the Applicant and superior to rights of shareholders. The payment of principal and interest (if any) on the Notes will be unconditionally guaranteed by SoGen. Such guarantee will rank *pari passu* with all other unsecured unsubordinated indebtedness (including deposit liabilities) of SoGen and superior to rights of shareholders.

Applicant represents that the proceeds from sales of the Notes will be used only for Applicant's current transactions and that the Notes will qualify for exemption from registration under section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"). Applicant represents that it will not issue or sell any Notes until it has received an opinion of its United States counsel that the Notes are entitled to such exemption. Applicant does not request Commission review or approval of the availability of such exemption.

Applicant also states that the proposed issue of the Notes and any future debt securities offering in the United States shall have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized investment rating organization, and that Applicant's United States counsel shall have certified that such rating has been received. However, no such rating will be required if, in the opinion of Applicant's United States counsel, an exemption from registration is available with respect to such issue under section 4(2) of the 1933 Act. With respect to any offering requiring registration under the 1933 Act, Applicant represents that it will not sell the securities pertaining thereto until the registration statement has been declared effective by the Commission.

Applicant states that it will provide each dealer in the Notes with sufficient information to prepare, and will undertake to ensure that each dealer will provide each offeree, prior to any sale of the Notes, a memorandum (the "Offering Memorandum") describing the business of both SoGen and Applicant and containing the most recently published financial statements of SoGen and Applicant audited in accordance with French and Canadian auditing practices, respectively. Applicant represents that the Offering Memorandum will describe the material differences between generally accepted accounting principles employed by United States banks and (i) French

accounting principles applicable to French banks and used by SoGen and (ii) Canadian accounting principles applicable to Canadian banks and used by Applicant. Applicant states that the Offering Memorandum will be at least as comprehensive as those customarily used in the United States by United States commercial paper dealers and will be updated periodically to reflect material changes in the business or financial status of SoGen or Applicant. Applicant consents to any order granting the requested relief being expressly conditioned upon the compliance by SoGen and Applicant with the foregoing undertakings regarding the Offering Memorandum.

With respect to the Notes and any future issuance by Applicant, SoGen and Applicant each expressly submit to the non-exclusive jurisdiction of any state or federal court located in New York City for the purpose of any suit, action, or proceeding brought on the Notes or the guarantees thereon, by holders of such obligations, and each will authorize an agent in New York City to accept service of process in any action based opon their respective obligations and will be subject to suit in any court in the United States which would have jurisdiction because of the manner of the offering or otherwise. Applicant further states that such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due with respect to the Notes, the guarantees relating thereto, and any liabilities or guarantees pertaining to future offerings have been paid.

Applicant states that it may, from time to time, offer and sell in the United States debt securities other than the Notes (which may be in denominations of less than $100,000) bu that it will not offer or sell equity securities in the United States. In the case of any such offering in the United States, the payment of principal, premium, and interest will be unconditionally guaranteed by SoGen. In connection with any future issuance of debt securities in the United States, Applicant undertakes to provide to any person to whom it offers such securities, prior to sale thereof, (and undertakes to assure that any underwriter or dealer through whom it makes such offers will provide to each person to whom such offers are made prior to sale of any sale obligations) disclosure documents which are at least as comprehensive in their description of Applicant and SoGen as those customarily used by United States issuers making similar offerings. Applicant consents to any Commission order granting the requested prospective relief, being expressly conditioned upon its compliance with the foregoing undertaking regarding disclosure memorandum.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 17, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Secrities and Exchange Commission, Washingtn, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-21 Filed 1-2-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Company Application and Renewal Fees; Increases in Fees Imposed

The Department of the Treasury will be increasing the fees imposed and collected as referenced at 31 CFR 223.22. This increase is to recover costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business.

The new fees are effective December 31, 1985, and are determined in accordance with the Office of Management and Budget Circular A-25, as amended. The fee increases are a result of a thorough analysis of costs associated with the Surety Bond Branch (SBB). This analysis, which included the use of a more reliable method for segregating SBB costs from other Treasury costs, has resulted in the conclusion that these costs have been understated in past years. The increased fees, as developed through this analysis, are as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$1500.

(2) Determination of a company's continuing qualifications for annual renewal of its Certificate of Authority—$850.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States—$200.

(4) Determination of a company's continuing qualifications for annual renewal of its authority as an Admitted Reinsurer—$100.

Questions concerning this notice should be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, Telephone (202) 634-2319.

Dated: December 30, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86-48 Filed 1-2-86; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Health Services Research and Development; Availability of Annual Report

Under Section 10(d) of Pub. L. 92-463, notice is hereby given that the Annual Report of the Veterans Administration Scientific Review and Development for calendar year 1985 has been issued.

This report summarizes activities of the Board on matters related to the review of health services research and development proposals submitted by Veterans Administration field staff. It is available for inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room, LM 133, Madison Building, Washington, DC 20540

and

Veterans Administration, Office of the Director, Health Services Research and Development Service, Room 644, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 18, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-58 Filed 1-2-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 2
Friday, January 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, December 30, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of an application of Standard Chartered Bank, London, England, for Federal deposit insurance of deposits received at and recorded for the accounts of its branch located at 1111 Third Avenue Building, Seattle, Washington.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: December 31, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-30711 Filed 12-31-85; 11:03 am]

BILLING CODE 6714-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 7, 1986 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, January 9, 1986 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Setting of dates of future meetings
Correction and approval of Minutes
Draft AO 1985-37: H. Richard Mayberry, Jr., Michigan State Chamber of Commerce and Grand Rapids Area Chamber of Commerce
Draft AO 1985-38 Lance H. Olsen, on behalf of Congressman Fazio
Draft AO 1985-39 Douglas C. Manditch, National Bank of New York City

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-30889 Filed 12-31-85; 1:57 pm]

BILLING CODE 6715-01-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, January 8, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30893 Filed 12-31-85; 2:07 pm]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM
(BOARD OF GOVERNORS)

TIME AND DATE: 10:00 a.m., Wednesday, January 8, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Interpretation of Regulation G (Securities Credit by Persons Other Than Banks, Brokers, or Dealers) to apply margin requirements to one specific class of transactions used to obtain credit for the purchase of margin stock. (Proposed earlier for public comment; Docket No. R-0562)

2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 31, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30938 Filed 12-31-85; 2:07 pm]

BILLING CODE 6210-01-M

5

POSTAL SERVICE
(Board of Governors)

By telephone vote on December 30, 1985, a majority of the members

contacted and voting, the Board of Governors voted to add to the agenda for the closed session on Monday, January 6, 1986 (see 50 FR 53061, December 27, 1985), the following item:

Discussion of possible rate implications of the shortfall in the FY 1986 revenue forgone appropriations.

The Board determined that pursuant to section 552(c)(10) of title 5, United States Code, and § 7.3(j) of title 39, Code of Federal Regulations, discussion of the matter is exempt from the open meeting requirement of the government in the Sunshine Act because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(10) of title 5, United States Code, and § 7.3(j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

Fred Eggleston,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 85–30886 Filed 12–31–85; 1:11 pm]

BILLING CODE 7710–12–M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 6, 1986.

A closed meeting will be held on Tuesday, January 7, 1986, at 2:30 p.m. An open meeting will be held on Thursday, January 9, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 7, 1986, at 2:30 p.m., will be:

Formal order of investigation.

Settlement of administrative proceeding of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Institution of injunctive actions.

Litigation matter.

Regulatory matter regarding financial institutions.

Opinions.

The subject matter of the open meeting scheduled for Thursday, January 9, 1986, at 10:00 a.m., will be:

1. Consideration of whether: (1) To authorize publication of a concept release seeking public comment on certain possible responses to large scale open market purchase programs; (2) to adopt amendments to Rules 13e–4 and 14d–10 providing that a tender offer must be open to all holders of the class of securities subject to the tender offer; (3) to propose for comment amendments to (a) Rules 13e–4 and 14d–10 providing that all security holders to whom a tender offer is made must be paid the highest consideration paid to any security holder; (b) Rules 13e–4 and 14e–1(b) providing that a tender offer must remain open for ten business days upon announcement of an increase or decrease in the percentage of securities being sought or consideration offered by the offeror; and (c) Rule 13e–4 and 14d–7 providing that upon announcement of a decrease in the percentage of securities being sought or consideration offered, additional withdrawal rights attach for ten business days; (d) Rule 13e–4 providing that an issuer tender offeror afford security holders withdrawal rights for a minimum period of ten business days upon the commencement of a third-party tender offer only if the issuer receives notice or otherwise has knowledge of the commencement of such tender offer; (4) to adopt amendments to Rule 13e–4 that would conform most of the time periods governing issuer tender offers to those governing third-party tender offers; and (5) to consider whether Commission action with respect to the regulation of certain offensive and defensive takeover tactics is appropriate at this time.

For further information with respect to the concept release and Commission consideration of whether to regulate certain offensive and defensive takeover tactics, please contact Joseph G. Connolly, Jr. or Gregory E. Struxness at (202) 272–3097; regarding adoption of the all-holders rule and proposal of the best-price provision for third-party tender offers, please contact Sarah A. Miller at (202) 272–2589; and information regarding adoption of the all-holders rule and proposal of the best-price provision for issuer tender offers and adoption of amendments to Rule 13e–4 conforming most of the time periods applicable to third-party tender offers to issuer tender offers, please contact Nancy J. Burke at (202) 272–2848 or Deren Manasevit at (202) 272–7494.

2. Consideration of whether to issue a release announcing the adoption of new Rule 0–11 under the Securities Exchange Act of 1934 as well as conforming amendments which would codify the Commission's administrative interpretations concerning fees for business combination transactions. Such fees have been collected since 1983 pursuant to legislative amendments to the Act. For further information, please contact Thomas Sweeney at (202) 272–2589.

3. Consideration of (1) a proposal by the Philadelphia Stock Exchange, Inc. to trade options on the European Currency Unit (File No. SR–Phlx–85–10) and (2) a proposal by the Option Clearing Corporation to issue, clear and settle such options (File No. SR–OCC–85–14). For further information, please contact Alden Adkins at (202) 272–2843.

4. Consideration of whether to issue a release proposing amendments to Rule 31–1 under the Securities Exchange Act of 1934 ("Act") to provide a temporary exemption for transactions in OTC/Exchange-Traded NMS Securities from payment of fees to the Commission under Section 31 of the Act. For further information, please contact Leland H. Goss at (202) 272–2827.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272–2091.

Dated: December 31, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–30972 Filed 12–31–85; 3:54 pm]

BILLING CODE 8010–01–M

Federal Register

Friday
January 3, 1986

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 733

Permanent and Interim Regulatory Programs; Evaluation, Federal Enforcement, and Withdrawing Approval of State Programs; Procedures; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 733

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Procedures for Evaluating State Programs, Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of availability of petition to initiate rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) seeks comments regarding a petition submitted by ten citizens' organizations submitted pursuant to the Surface Mining Control and Reclamation Act (the Act), to amend OSMRE's existing regulations concerning procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs.

The petitioners maintain that the proposed amendments will bring those provisions of OSMRE's regulations defining OSMRE's non-discretionary oversight duties into conformance with the mandatory duties of the Director and the Secretary under the Surface Mining Act, 30 U.S.C. 1201–1328, and the Administrative Procedure Act, 5 U.S.C. 501–706, and will alter OSMRE's evaluation of State programs to comply with Congressional intent. Specifically, OSMRE is requesting comments on the merits of the petition and the rule changes suggested in the petition. Such comments will assist the Director of OSMRE in making the decision whether to grant or deny the petition.

DATES: OSMRE will accept written comments on the petition until 5:00 p.m. eastern standard time on February 3, 1986.

ADDRESSES: Written comments must be mailed to the Administrative Record, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240 or hand-delivered to the Administrative Record, Office of Surface Mining, U.S. Department of the Interior, Room 5124, 1100 "L" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, Room 110, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures

Written Comments

Written comments on the suggested changes should be specific, should be confined to issues pertinent to the petition, and should explain the reasons for the comment. Comments received after the close of the comment period (see **"DATES"**) may not necessarily be considered or included in the administrative record on the petition. OSMRE cannot ensure that written comments received or delivered during the comment period to any location other than that specified under **"ADDRESS"** above will be considered and included in the administrative record on this petition.

Availability of Copies

Additional copies of the petition and copies of 30 CFR Part 733 are available for inspection and may be obtained at the location listed under **"ADDRESS"**.

Public Meetings

OSMRE will not hold a public hearing on the petition or proposed revisions, but OSMRE personnel will be available to meet with the public during business hours, 8:00 a.m. to 4:00 p.m., during the comment period. In order to arrange such a meeting, call or write to the person listed above under **"FOR FURTHER INFORMATION CONTACT"**.

II. Background and Substance of Petition

OSMRE received a letter dated November 13, 1985, from the Honorable Morris K. Udall, Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives forwarding a petition by the Dakota Resource Council, Environmental Policy Institute, Illinois South Project, Inc., Legal Environmental Assistance Foundation, Northern Plains Resource Council, Powder River Basin Resource Council, Public Lands Institute, Save Our Cumberland Mountains, Western Colorado Congress, and the Western Organization of Resource Councils. The petitioners seek certain amendments to regulations found at 30 CFR 733.12 relating to procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs. The text of the petition appears as an appendix to this notice.

Pursuant to section 201(g) of the Act, any person may petition for a change in OSMRE's permanent program rules which appear in 30 CFR Chapter VII. The Act allows for a period of 90 days within which to decide to grant or deny a petition (section 201(g)(4); 30 U.S.C. 1211(g)(4)). Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comments on the merits of the petition and on the rule changes suggested in the petition. At the close of the comment period, a decision will be made whether to grant or deny the petition. If the decision is made to grant the petition, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. If the decision is made to deny the entire petition, no further rulemaking action will occur pursuant to the petition.

While the petition is pending, OSMRE intends to continue to oversee State programs under existing policies and practices. OSMRE also intends to continue its management planning. While these activities are closely related to the rulemaking petition, the agency will not prejudge the petition, but will fully and fairly consider the merits of the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a formal rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order No. 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322(2)(C), is needed.

List of Subjects in 30 CFR Part 733

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 26, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

Appendix

The text of the petition date September 3, 1985 is as follows: Petition to initiate rulemaking 30 CFR 700.12.

Petition For Rulemaking

Office of Surface Mining

Submitted by:
Dakota Resource Council
Environmental Policy Institute
Illinois South Project
Legal Environmental Assistance Foundation
Northern Plains Resource Council
Power River Basis Resource Council
Public Lands Institute
Save our Cumberland Mountains
Western Colorado Congress
Western Organization of Resource Councils

I. Summary

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(e), the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1211(c)(2) and (g), and regulations of the Office of Surface Mining (OSM), 30 CFR 700.12, the Dakota Resource Council, Environmental Policy Institute, Illinois South Project, Inc., Legal Environmental Assistance Foundation, Northern Plains Resource Council, Powder River Basin Resource Council, Public Lands Institute, Save Our Cumberland Mountains, Western Colorado Congress, and the Western Organization of Resource Councils (hereinafter, Petitioners) petition the Director, OSM, for certain amendments to regulations found at 30 CFR 733.12 relating to procedures for evaluating State programs, substituting Federal enforcement of state programs and withdrawing approval of state programs. The proposed amendments will bring those provisions of OSM's regulations defining OSM's non-discretionary oversight duties into conformance with the mandatory duties of the Director and the Secretary under the Surface Mining Act, 30 U.S.C. 1201–1328, and the Administrative Procedure Act, 5 U.S.C. 501–706, and will alter OSM's evaluation of state programs to comply with Congressional intent.

II. Description of Petitioners

Petitioner Dakota Resources Council (DRC) is a grass-roots membership organization of farmers, ranchers, and other citizens concerned about the effects of energy development on agriculture. Its membership of 700 families has worked for adequate implementation of the state and federal SMCRA and is particulary concerned with the state public service commission's enforcement practices. Many of DRC's members farm near areas which are or will be affected by surface-mining. Since 1977, the DRC has been actively involved in the reclamation rulemaking process via public hearings and comments.

Petitioner Environmental Policy Institute is a national organization working with citizens concerning the protection of the environment including the effective control and regulation of surface coal mining. EPI spearheaded citizens' efforts to obtain passage of the Surface Mining Act and has actively been involved in promoting adequate implementation of the Act by OSM.

Petitioner Illinois South Project is a non-profit citizen-sponsored organization which has worked on the social, economic and environmental impacts of coal development in Illinois communities since 1974. Since September 1977, the Illinois South Project has had a major role in organizing actions on behalf of a statewide coalition of citizens which monitors and promotes the effective implementation of the Surface Mining Act in Illionis.

Petitioner Legal Environmental Assistance Foundation is a regional public-interest law firm and membership organization providing legal and technical assistance to citizens in the southeast on environmental and health issues. The LEAF organization in Tennessee is especially concerned with the effective control and regulation of coal surface mining and has been actively involved in adequate implementation of SMCRA.

Petitioner Northern Plains Resource Council is a non-profit corporation organized under the laws of the state of Montana. Northern Plains Resource Council was founded to protect its members from the adverse effects of strip mining and has advocated effective surface mining regulation for fourteen years. Northern Plains Resource Council was active in efforts to pass both the federal and the Montana state surface mining laws.

Petitioner Powder River Basin Resource Council is a non-profit, agricultural conservation organization incorporated under the laws of the state of Wyoming. It has over 500 members including ranchers, farmers and other citizens, many of whom reside in Johnson, Sheriden and Campbell counties in Wyoming. The Council is primarily concerned with protecting the viability of the state's agricultural economy and the social and economic structures of communities in the Powder River Basin, other areas of Wyoming, and the West from the adverse effects of energy development.

Petitioner Public Lands Institute is a national non-profit membership organization dedicated to incorporating environmental values in national policies.

Petitioner Save Our Cumberland Mountains, Inc. is a non-profit organization whose membership of some 600 families is composed of residents of the Appalachian area who are vitally concerned about the proper regulation of surface mining. Its members live nearby and use lands and waters damaged by irresponsible, unlawful strip mining activities such as polluted streams, damage from blasting, landslides, unstable soil, flooding and loss of groundwater.

Petitioner Western Colorado Congress (WCC) is a democratically-controlled grass-roots organization composed of approximately 800 members who work on a variety of natural resource and consumer issues affecting Colorado, especially western Colorado. Since 1982, the WCC has been actively involved in and concerned with the effects of the SMCRA on tourism and agriculture in Colorado. Many of WCC's members live in areas that are or will be affected by surface mining.

Petitioner Western Organization of Resource Councils ("WORC") is a non-profit membership organization incorporated under the laws of the state of North Dakota. WORC consists of four organizations, the Dakota Resource Council, the Northern Plains Resource Council, the Powder River Basin Resource Council, and the Western Colorado Congress, representing approximately 3,500 families in the states of North Dakota, Montana, Wyoming, and Colorado. Most of WORC's members are farm and ranch families who reside in areas where local coal mining activities will be and are conducted.

III. The Proposed Amendments

Petitioners request promulgation of the following regulations to govern OSM's oversight evaluation of the states' programs. Specific new language is italicized

1. Amend 30 CFR 733.12(a) by replacing the current text with:

(a) Evaluation Procedures and Criteria. *Annual evaluations of state programs shall be prepared in accordance with uniform evaluation procedures developed by the Director after notice and opportunity for public comment.*

(1) *The Director shall promulgate specific uniform evaluation procedures in accordance with the standards set forth in the Act.* The Director shall:

(i) *Publish in the Federal Register a notice and full text of the proposed evaluation procedures. The notice shall include a date, not less than 30 days after publication of the notice, by which*

members of the public may submit written comments on the procedures and the person to whom comments should be addressed;

(ii) *Publish in the Federal Register within 90 days thereafter, the full text of the final evaluation procedures and the reasons therefor; and*

(iii) *Adopt and implement the final evaluation procedures for each category listed in paragraph (2) below simultaneously upon the promulgation of this rule.*

(2) *Each annual evaluation of a state program shall, at a minimum, contain statistical information and analysis of that information as necessary to determine with substantial confidence the adequacy of the state's administration regarding the following major categories: inspections and enforcement; and penalty assessments and collections; permitting; performance standards: bonding and bond release; citizen rights; designation of lands unsuitable; reclamation of abandoned mine lands and collection of AML fees; compliance with conditions of state program approval; and sufficiency of funds, training, and the state's legal, technical and administrative personnel to administer the state program.*

(3) *The evaluation procedures adopted and implemented by the Director shall—*

(i) *Assure a comprehensive evaluation of a state program;*

(ii) *Divide the major categories into subcategories as necessary for comprehensive evaluation. Subcategories shall include but not be limited to: the frequency of inspections; the completeness of inspections; effectiveness of alternative enforcement mechanisms; the appropriateness of enforcement actions taken or not taken; timeliness and adequacy of penalty assessment and collection; conflict of interest by state personnel; sufficiency of bonds; grant or denial of permits to operators with uncorrected violations of surface mining or other laws or regulations of any state; adequacy of cumulative hydrologic impact analysis; determinations of probable hydrologic consequences; measures required for alluvial valley floor protection; subsidence monitoring, insurance, and control plans; backfilling and grading; prime farmland restoration plans; soil and overburden analysis; soil suitability determinations; handling of toxic overburden; substitution of lower horizons for topsoil; maintenance and reporting of ground and surface water monitoring; recovery of AML fee delinquencies and denial of new permits of operators with delinquent fees; and review of state decisions in response to citizen complaints and to OSM's annual reports.*

(iii) *Contain detailed, uniform procedures for the evaluation of each of the major categories and the subcategories above; and*

(iv) *Define acceptable performance levels for each subcategory above.*

2. Renumber existing 30 CFR 733.12(a)(2) to 733.12(b).

3. Add new subsections (c)–(e) to 30 CFR 733.12, as follows:

(c) *The Director shall evaluate the administration of each state program at least annually and shall publish in the Federal Register and in newspapers of general circulation in the state a notice indicating that a draft of the evaluation report required under (a) or (b) has been prepared. The notice shall indicate how interested persons may obtain a copy of the report and that the full text is available for review during regular business hours at the OSM state office and at the central office and at each field office of the state agency that was evaluated. It shall also afford interested persons an opportunity to request a hearing and/or submit written comments within a 45-day period beginning upon publicaton of the notice.*

(d) *In preparing the final evaluation report, the Director shall:*

(1) *consider all relevant information, including information obtained from public comments;*

(2) *include in the final report the Director's response to all public comments, prior to the publication of the final evaluation report, and*

(3) *issue written findings on the state's implementation, administration, maintenance and enforcement of all parts of the state program.*

(e) *The Director shall publish in the Federal Register and in a newspaper of general circulation in the State a notice indicating that the final evaluation report has been prepared. The notice shall indicate how interested persons may obtain a copy of the report and that the full text is available for review during regular business hours at the OSM state office and at central office and at each field office of the state agency that was evaluated. The Director shall send a copy of the final report as soon as it is issued to all persons who submitted comments on the draft.*

4. Amend and renumber 30 CFR 733.12(b) to read as follows:

(f) *Whenever OSM or any interested person, as provided in subsection (b) above, identifies any failure of the state to achieve a performance level (as defined previously) in the implementation, administration, maintenance, or enforcement of any part of its approved state program, the Director shall promptly notify the state regulatory authority in writing and allow a reasonable time (as specified in the notice, but not more than 90 days) for the state to correct any and all deficiencies identified. The Director's notice shall*—[return to the original text].

5. Amend and renumber 30 CFR 733.12(b)(3) to read as follows:

(f)(3) *Pending completion of any changes in a state program required by the Director, the states shall act in accordance with the required changes.*

6. Amend and renumber 30 CFR 733.12(c) to 733.12(g) and add the following at the end of the subsection:

The Secretary shall give at least 20 days' written notice, in the Federal Register and in a newspaper of general circulation in the state, to the public of any informal conference and any informal conference shall be open to the public.

7. Amend and renumber 30 CFR 733.12(d) to read as follows:

(h) *Within 30 days after the end of the time period specified by the Director, the Director shall make a written evaluation of whether the State regulatory authority has accomplished the remedial actions and shall give notice to the State and the public of his findings by publication in the Federal Register and in newspapers of general circulation in the state. Copies of the evaluation shall be made available to the state regulatory authority and the public. If the findings show that the State has not fully remedied its failure to implement, administer, maintain, or enforce a part or all of a State program, the Director shall hold a public hearing in the State within 30 days of the publications date.*

8. Amend and renumber 30 CFR 733.12(e) to 30 CFR 733.12(i.) so that the first sentence reads as follows:

(i.) Upon completion of the hearing under subsection (h) above, the Director shall issue findings, based upon all available information, the hearing transcript and written comments, whether the state either (i) has properly and fully implemented, administered, maintained and enforced all parts of its regulatory program; or (ii) has failed to implement, administer, maintain or enforce effectively all or any part of its approved State program. In the event of negative findings, the Director will revoke the Secretary's approval of the state program.

9. Amend and renumber 30 CFR 733.12(g) to 733.12(j) and add new paragraphs (j) (3)–(5), as follows:

(3) *Within 30 days after the date of the Director's decision (i) to issue a*

state program evaluation, (ii) to revoke a state program, or (iii) to return a state program, the state or any person with an interest which is or may be adversely affected and who participated in the process of evaluating a state program under this section may appeal the Director's findings to the Interior Board of Land Appeals, as provided by 43 CFR section 4.1280 et seq.

(4) If the Director returns a state program in whole or in part, there shall be a public comment period regarding the suitability of returning the program to the state, of not less than 30 days, prior to the Secretary making written findings regarding the return of a state program, in whole or in part, to the state.

(5) If the Director revokes a state program in whole or in part, there shall be a public hearing held by the Director, regarding the suitability of revoking the state program, at least 30 days prior to the Secretary making written findings concerning the revocation of a state program, in whole or in part, to the state.

IV. Reasons why this petition should be granted

A. OSM Oversight Regulations are Required by Law

The Administrative Procedure Act (APA) broadly defines a "rule" as:

> [T]he whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. . . .

5 U.S.C. 551(4). Any federal agency action which would establish a "rule" as defined above must follow the notice and comment procedures required by APA Section 553, unless otherwise explicitly provided by law.

OSM has promulgated the equivalent of two documents governing its oversight and evaluation of state programs which fall within the APA's definition of rule, but OSM has failed to comply with the APA's requirements for public notice and comment. The OSM documents are: *Plans and Procedures for the Evaluation of the States' Permanent Programs* (March 5, 1982); and the *Sampling Method for Conducting Federal Inspections In States with Approved Surface Mining Regulatory Programs* (Final Draft, March 13, 1981).

While there are certain exceptions to the rulemaking requirements of the APA, the courts have held that they must be narrowly construed. See *Batterton* v. *Marshall*, 648 F.2d 694, 700–01 (D.C. Cir. 1980). None of the exceptions to Section 553 applies either to OSM's "Oversight Plans and Procedures" or the "Oversight Sampling Method." Both of these documents produce significant impacts on private interests and constrict agency discretion. The U.S. Court of Appeals for the District of Columbia Circuit and other courts have held that rulemaking procedures must be followed to implement such agency actions that have substantial impacts on private parties. See, *Batterton* v. *Marshall*, *supra*, 648 F.2d at 701–708, n. 83; *Pickus* v. *U.S. Board of Parole*, 507 F.2d 1107 (D.C. Cir. 1974); *Natural Resources Defense Council* v. *EPA*, 683 F.2d 752, 765 (3d Cir. 1982); *Texaco Inc.* v. *FPC*, 412 F.2d 740 (3d Cir. 1969); and *Pharmaceutical Manufacturers Ass'n* v. *Finch*, 307 F.Supp 858 (D. Del. 1970).

There can be no question that OSM's oversight documents have a substantial impact on private parties. They directly affect the rights of citizens who live near coal mines, who are harmed by mining, who file complaints about improper mining practices or inadequate state enforcement, and who regularly use and enjoy the environmental resources that are damaged by mines not adequately controlled by states or overseen by OSM. Petitioners' respective members include persons who live near, work on and enjoy recreational and other resources in coal mining areas and who are directly and indirectly affected by the failure of the Secretary and OSM to promulgate rules governing oversight of state programs and to implement state program oversight in a consistent and uniform manner.

As a result of OSM's inadequate and inconsistent oversight requirements, surface coal mining is not properly regulated by the states. This inadequate state enforcement damages petitioners and their members by causing destruction and diminution of the utility of the land for commercial, industrial, agricultural, recreational and forestry purposes due to increased erosion, landslides, subsidence, floods, pollution of water and air, appropriation of scarce water resources, destruction of fish and wildlife habitat, impairment of natural beauty, loss of recreational opportunities, damage to property, creation of hazards to life and property, destruction or impairment of archaeological and historical resources, and degradation of the quality of life in local communities.

OSM's current oversight rules aggravate these problems because they do not require that OSM apply objective standards and consistent methods for evaluating state regulatory programs. Moreover, the current regulations omit any reasonable trigger mechanisms or warning signals to alert OSM, the states and the public when states have failed to enforce critical program elements; and they do not establish uniform criteria for OSM's Field Office Directors to determine when they must take affirmative action to remedy the inadequacies in state program implementation and enforcement.

In addition, OSM's oversight procedures affect the information available to the public about state and federal mining control programs. They also define the information that state regulatory authorities must provide to OSM and the public. As such, they fall within the APA's definition of a rule and should have been published for public notice and comment.

Finally, the OSM Oversight Inspection Sampling Method, much like the Department of Labor statistical sampling method at issue in *Batterton*, *supra* directly defines how OSM goes about collecting information upon which it will base its actions affecting private rights. The results of the sampling done pursuant to this policy directly affect the duties and rights of state regulatory authorities (see, *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 874–878 (D.C. Cir. 1979); *Gibson Wine Co. v. Snyder*, 194 F.2d 329 (D.C. Cir. 1952)) and are not merely rules of agency organization, procedure or practice (see *Batterton*, *supra*, at 872–878). Therefore, the Oversight Inspection Sampling Method should have been adopted after full compliance with the APA's notice and comment procedures.

B. OSM has a Statutory Duty to Oversee State Regulatory Programs

Under the Surface Mining Act, OSM is responsible for assuring that each state with an approved surface mining regulatory program actually implements its programs in compliance with federal and state laws and regulations. OSM's process of verifying state compliance is commonly called "oversight." SMCRA is unequivocal about the Secretary's nondiscretionary oversight duties:

1. The Secretary "shall . . . make those investigations and inspections necessary to insure compliance with" SMCRA (Sec. 201(c));
2. The Secretary "shall cause to be made such inspections . . . as are necessary to evaluate the administration of approved state programs" (Sec. 517(a));
3. The Secretary "shall notify the state regulatory authority" if, "on the basis of any information available to him . . . [he] has reason to believe that any person is in violation of any requirement of [SMCRA] . . or any permit required by [SMCRA] [a so-called "Ten Day Notice"] (Sec. 521(a)(1));

4. The Secretary "shall immediately order federal inspection" of a mine for which he has issued a Ten Day Notice if "the State regulatory authority fails within ten days after notification to take appropriate action to cause said violations to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary . . ." (Sec. 521(a)(2));

(5). The Secretary "shall immediately order a cessation of surface coal mining and reclamation operations . . ." where on the basis of any federal inspection, he "determines that any . . . condition, practice or violation . . . creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm . . ." (Sec. 521(a)(2));

6. The Secretary "shall prepare and . . . promulgate and implement a Federal program . . . if such State . . . (3) fails to implement, enforce, or maintain its approved State program as provided for" in SMCRA (Sec. 504(a)(3)); and

7. "Whenever . . . the Secretary has reason to believe that violations of all or any part of an approved State program result from a failure of the State to enforce such State program or any part thereof effectively, *he shall* . . . hold a hearing thereon in the State . . . If as a result of said hearing the Secretary finds that there are violations and such violations result from a failure of the State to enforce all or any part of the State program effectively, and if he further finds that the State has not adequately demonstrated its capability and intent to enforce such State program, he *shall give public notice* of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this Act, the Secretary *shall enforce*" SMCRA (Emphasis added) (Sec. 521(b)).

These provisions were incorporated into SMCRA as a result of Congress' findings that the states were not complying with existing federal and state laws and regulations. See section 101, 30 U.S.C. 1201. The recent failures of the regulatory programs in Oklahoma and Tennessee clearly demonstrate the compelling need for a diligent federal oversight role, so as to insure the continued compliance of state programs with the federal standards as set forth in SMCRA and the federal regulations. Unless OSM properly carries out its mandatory oversight role, other states are also likely to fall short of the SMCRA standards.

C. OSM Must Establish a Systematic Method To Measure and Evaluate the Effectiveness of State Programs

In order to implement the requirements of SMCRA cited above, OSM must establish an objective, systematic method of measuring and evaluating the performance of state regulatory authorities in complying with the federal and state laws and regulations. Such an oversight procedure should include:

1. A reasonable and adequate set of objective criteria by which to measure state compliance, and these criteria should address all elements of SMCRA such as those listed in the proposed amendments to 30 CFR 733.12(a) above;

2. Guidelines to be used by OSM in evaluating the states' performance with respect to those objective criteria established above;

3. A reasonable and objective set of measurements of state's administration of its regulatory program to be used as indicators or warning signals of state program efficacy with respect to each of the guidelines;

4. Standard methods of data collection, preparation, measurement, analysis, and determination of the reliability and comparability of the data for each criterion being measured; and

5. An authenticated sampling methodology to be used for deriving a representative sample of sites within a state for use in evaluating the entire state program.

Without such a systematic approach to oversight, the Secretary is unable to carry out his non-discretionary duties under SMCRA to ensure state compliance and the public loses any assurance that the benefits of the Act will be achieved.

If OSM had previously adopted comprehensive guidelines for evaluating state programs and had fully implemented them, petitioners' concern with the agency's failure to comply with the APA could be quickly remedied by proposing the two existing oversight documents as rules. However, this is not the case. OSM's current oversight documents fail to address many aspects of state regulatory programs including the factors to be evaluated in permit applications, public participation, bonding, fee collection and performance standards, to name a few; and they do not conform to the five criteria described above.

Moreover, OSM's own records and evaluations by non-agency investigators [Staff of House Comm. on Appropriations, 98th Cong., 2d Sess., *Report On The Regulatory Program Of The Office Of Surface Mining*, (Comm. Print 1983, pg. 11); and C. Johnson and E. Hildebrandt, NRDC, *Still Stripping the Law on Coal* (1984, pp. 105, 111] indicate that the agency has not complied with its own Oversight Sampling Method in the following ways:

1. OSM has failed to conduct the minimum number of complete oversight inspections prescribed in its own sampling method;

2. OSM has failed to identify subpopulations of mines in the states;

3. OSM has failed to identify the population being sampled;

4. OSM has failed to assure random sampling;

5. OSM has counted single inspections of one mine (with several permit numbers) as several oversight inspections.

D. OSM Has Substituted Improper Procedures When It Has Identified Failures of a State To Enforce All or Part of Its Program

OSM's current regulations provide that when the Director has reason to believe that a state is not effectively carrying out any part of its approved state program, the Director shall promptly notify the state regulatory authority in writing of the portions not being carried out, the reasons for his belief, and set a time period for the state to remedy the failure. 30 CFR 733.12(b). Informally, OSM has added two intermediate steps before the Director writes a "733" letter to a state. First, the "Plans and Procedures" document (page 12) instructs OSM State Office Directors to:

> (2) identify, discuss, and recommend corrective measures and time schedules for any deficiencies noted in the areas of the State's program;
>
> (3) recommend to the Director that a 521(b) proceeding be initiated if the State fails to cooperate with the process in (2) above or fails to accomplish the remedial measures within the agreed time periods.

If a State does not "cooperate" with the State Office Director in step 2 above, however, OSM has adopted an additional step. The Director writes the Governor to request the Governor's cooperation in correcting the deficiencies, although no schedule for correction is given. Apparently, such letters have been sent to Arkansas, Colorado, and New Mexico.

OSM's annual evaluation reports are replete with instances of state failures to implement, administer, maintain, or enforce their programs. However, only three states have received "733" letters from the Director: Kansas, Oklahoma, and Tennessee. Yet, OSM's 1984 evaluation reports on every state described significant failures to enforce their regulatory programs. To illustrate, OSM's 1984 reports for just five states have documented serious failures by states in the following areas:

1. Inspection frequency—Colorado, Kentucky, North Dakota and Ohio;

2. Adequacy of penalties assessments—Illinois, Kentucky and Ohio;

3. Completeness of inspections—Colorado, Kentucky, Ohio and Illinois;

4. Enforcement actions taken on areas observed during inspections (actions not taken or delayed for weeks after inspections)—Colorado, Kentucky, Illinois, and North Dakota;

5. Technical analyses—Colorado, Kentucky, Illinois, North Dakota and Ohio; and

6. Permitting violations with operators receiving permits without demonstrating compliance with one or more permit requirements—Colorado, Kentucky, Illinois, North Dakota and Ohio.

There were no "733" letters sent to any of these states and there is no indication of any substantial improvement in the states' ability to enforce their programs.

The amendments proposed by the petitioners to 30 CFR 733.12 are designed to address the problem of OSM substituting other actions for formal "733" letters and allowing states to delay correction of deficiencies for long periods. The solution is achieved by defining the circumstances under which the Director "has reason to believe" that a state has failed to "enforce . . . any part" of its programs and must issue a "733" letter according to section 521(b) of the Act. The trigger for a 733 letter is when any OSM evaluation report identifies any failure by the state to fully carry out any part of its program. A time-limit of 90 days is established as the maximum period during which a state must correct fully the deficiencies. This 90-day time-limit should provide the states with sufficient time to evaluate the problem adequately and to implement any needed changes in their program administration.

E. SMCRA Requires Public Participation in Enforcement of State Programs

Under SMCRA, the Secretary has a clear duty to ensure that effective procedures are enacted for public participation in the "enforcement of regulations, standards, reclamation plans, or programs" established under SMCRA (Sec. 102(i)).

Congress stated the necessity for citizen participation to achieve effective implementation of SMCRA:

> The success or failure of a national coal surface mining regulatory program will depend, to a significant extent, on the role played by citizens in the regulatory process. . . . While citizen participation is not, and cannot be, a substitute for governmental authority, citizen involvement *in all phases* of the regulatory scheme will help insure that the decisions and actions of the regulatory authority are grounded upon complete and full information. (House Report 95–218, Committee on Interior and Insular Affairs, 1977, pp. 88–89) (emphasis added).

As set out under IV–B above, the Secretary's responsibilities to ensure that state regulatory programs are evaluated and enforced are some of his major, non-discretionary duties under SMCRA. However, under OSM's current regulations, the public has no procedure for participating in OSM's evaluations of state programs.

Recently, states have been given the right to participate in the evaluation of their own programs, and are not treated at arms-length, as potential opponents of OSM. This practice is wholly improper and unacceptable in that it grants to the states a privilege not currently available to the public. In addition, due to the potentially immoderate political pressure that could be placed on OSM by individual states, the states should have the relationship with OSM in the evaluation process that an audited company has with its auditors; and the public should be afforded at least equal participation in the process.

The current regulations also fail to fulfill Congress' intent that OSM's decisions be based on full and complete information. The amendments to 30 CFR 733.12 proposed here by petitioners will remedy these deficiencies by requiring that OSM give the public notice of the draft annual state evaluation reports, make copies available, allow for public comments on the draft report, consider the public comments before publishing the final annual evaluation report, and make either favorable or negative findings on a state program after any public hearing.

V. Conclusion

For all of the foregoing reasons, petitioners urge OSM without delay to commence a rulemaking proceeding pursuant to 5 USC 553 to promulgate the amendments to 30 CFR 733.12 as proposed in this petition.

Dated: September 3, 1985.

Respectfully submitted,

Rose Sickler,

Dakota Resource Council, 29 Seventh Avenue, West, Dickinson, ND 58901.

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Jan Flaherty,

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Carolyn R. Johnson,

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Federal Register

Friday
January 3, 1986

Part III

Department of Housing and Urban Development

24 CFR Part 905

Indian Housing; Indian Preference; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. R-85-1122; FR-1808]

24 CFR Part 905

Indian Preference

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish comprehensive new requirements governing the methods to be used in providing Indian preference in contracting, employment and training in the HUD-assisted Indian housing program.

DATE: Comments must be received by March 4, 1986.

ADDRESS: Interested persons are invited to submit comments to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John V. Meyers, Office of Indian Housing, Room 4232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 9, 1976, HUD published a final rule that implemented HUD's responsibilities under the Indian Self-Determination and Education Assistance Act (Act) for the Department's Indian Housing Program. This regulation required, "to the greatest extent feasible," preference in the award of contracts to Indian organizations and economic enterprises, so long as such awards did not result in a higher cost or greater risk of nonperformance. It further required that all contracts and subcontracts include a clause requiring Indian preference in training, employment, and subcontracting.

In order to provide for more effective implementation of Indian preference requirements, in June 1976 HUD waived the above regulation and issued an amendment to the Indian Housing Handbook (#7440.1) relating to Indian preference in the selection of prime contractors. Four methods of providing preference were authorized.

Two of the methods allowed an Indian Housing Authority (IHA) to award contracts to an Indian enterprise so long as its bid was no greater than 110% percent of the lowest responsible bid or acceptable proposal. Two methods allowed and IHA to invite bids or proposals initially only from Indian enterprises.

Experience showed that the concept of open competition between Indian and non-Indian enterprises, with a 10% price differential for Indian preference, was not practicable for many contracts. On large contracts (where a 10% price differential could amount to hundreds of thousands of dollars), the effect was to discourage non-Indian enterprises from participating in the bidding process.

As result, when HUD revised 24 CFR Part 905 (formerly 24 CFR Part 805) on November 6, 1979 (44 FR 64204, Part IV) a portion of the regulation of IHA selection of prime contractors was changed to provide that an IHA could meet its preference obligation by: (1) Inviting bids or proposals solely from Indian enterprises; or (2) where it had been determined that there were no qualified Indian enterprises, by issuing an open invitation for bids or proposals. (The requirement for the section 7(b) clause in all contracts and subcontracts was continued in the revised regulation.) Since its publication, this method has been determined to result in a severe limitation in competition among bidders and was found by the Department not to be appropriate for all IHA contracts (e.g., professional services contracts).

This rule proposes, among other things, to reinstate a permissive bid price differential procedure favoring Indian bidders. The method proposed in this rule contrasts with the old 10% price differential procedure, because it would (1) allow IHA's to use varying levels of price differential in awarding contracts under the invitation for bid (IFB) process when the IFB solicitation does not limit the competition to Indian-owned enterprises and organizations and (2) encourage non-Indian enterprises and organizations to bid on contracts because of the generally reduced price differential given Indian enterprises and organizations. The rule provides for a descending percentage differential, depending upon the size of the contract being bid.

On September 23, 1983, the Department published in the **Federal Register** a Notice of Inquiry soliciting comments on the Indian preference provisions found in the Indian housing regulations. The Notice of Inquiry stated that "HUD is undertaking this inquiry to determine whether revisions to its current Indian preference regulations in connection with contracts, subcontracts, employment and training under the Department's Indian Housing Program would be appropriate." Twenty-seven comments were received by the Department, some of which are summarized below.

A commenter asserted that a complaint process should be included in the rule, in order that parties would have a method to redress their grievances. A complaint procedure has been added to the proposed rule. (See § 905.204(g).)

A commenter inquired whether the rule applies to all types of contracts. The Act, and therefore the proposed rule, applies to all contracts and subcontracts let in connection with both the development and operation of the HUD-assisted Indian Housing Program.

Another commenter suggested that the rule should: (1) require that a business, to qualify for a preference, should demonstrate that it is at least 51% Indian owned and controlled and (2) explain what types of information would be needed to prove that it is qualified. Section 905.204(b)(1) of the proposed rule states that an applicant seeking preference in contracting shall submit proof of Indian ownership, which includes evidence: (1) Of the applicant's status as in Indian, and (2) of the stock ownership, structure, management, control, financing and salary of profit sharing arrangements of the enterprise. Further, § 905,204(b)(3) provides that the applicant shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or contractor that the applicant has the technical, administrative, and financial capability to perform contract work of the size and type involved.

One commenter thought that the rule should provide guidance on what constitutes Indian preference in employment and subcontracting. The proposed rule addresses in detail what methods shall be used in providing preference in subcontracting and employment and, therefore, what constitutes adherence to the requirement for preference to the greatest extent feasible.

Another commenter stated that it would be unreasonable to require an IHA to impose bidding procedures when contracting for legal and other professional services. The proposed rule would provide for a Request for Proposals process that an IHA could use in contracting for legal and other professional services (see

§ 905.204(c)(2)) or other contracts where an IFB process (basing award exclusively on price) is not considered to be appropriate.

One commenter wanted the proposed rule to include a provision that would allow an IHA to request a waiver of HUD's Indian preference regulations in those cases where it is obvious to the IHA and the HUD Office of Indian Programs that there are no qualified Indian-owned enterprises in the area that could provide a particular service or product. This rule would solve that problem in § 905.204(d)(1), which states that where providing a preference is infeasible, an IHA shall document in writing the basis for its determination of infeasibility and maintain the documentation in its files for HUD review.

In light of these public comments, the Department determined that it was appropriate to publish revised proposed Indian preference regulations. As an interim measure, HUD published a Statement of Policy in the **Federal Register** on September 26, 1984 (49 FR 37749) which (a) provided guidance to Indian Housing Authorities and other persons concerned with the implementation of the Department's current Indian preference rules and (b) responded to questions that were raised about the implementation of the Department's Indian preference requirements.

The Statement of Policy provided that methods other than those described in 24 CFR 905.204 would have to be recommended by an IHA for approval by the appropriate HUD Indian Field Office, and submitted to the Assistant Secretary for Public and Indian Housing for review. If no adverse action was taken by the Assistant Secretary within ten (10) working days of receipt, the proposed method was automatically approved and could be implemented.

This rule would expand upon the Indian preference methods provided for in the current rule. The proposed rule provides specific methods that can be used by an IHA, and also permits the use of the alternate method enacted by the tribal governing body where the Assistant Secretary for Public and Indian Housing reviews and approves it in lieu of the methods provided for explicitly in the rule. (See proposed § 905.204(a)(1)(i).)

The proposed rule would (1) consolidate the methods of providing Indian preference in contracting and subcontracting, rather than having one system for contracts and another for subcontracts; (2) provide for varying levels of price differential on invitation-for-bid type contracts, according to the size of the contract in question (to be used when the bid solicitation is not limited to Indian enterprises and organizations); (3) provide a choice of contracting methods that can be used, at the IHA's discretion: (4) increase competition in the award of contracts, including contracts where the bidding is restricted to Indian organizations and enterprises; (5) provide a review procedure for reviewing complaints about the implementation of the methods of Indian preference specified in the rule or about alternate methods approved by HUD.

The proposed rule retains the requirement that both Indian contractors (see proposed § 905.204(b)(3)) and non-Indian contractors (see § 905.211(c)) must submit evidence sufficient to demonstrate to the satisfaction of the IHA that they have the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the proposed contract.

In addition, this rule clarifies that the requirement for providing Indian preference is applicable within and outside the boundaries of the Indian area.

Perference requirements properly imposed by local governing bodies will also be applicable to HUD-assisted projects so long as they do not negate HUD's proposed Indian preference rule or impose requirements which are contrary to HUD's rule. Such local preference requirements may not cause the project or activity to exceed Total Development Costs (TDC) or budget limitations.

Most importantly, the Department's proposal attempts to provide guidance concerning the dimensions of the statutory requirement that Indian preference be provided "to the greatest extent feasible." Accordingly, in the provisions governing price differential for contracts and subcontracts on which bids are invited (§ 905.204(c)(1)(ii), the rule reflects HUD's judgment that so long as the bids are within budgetary limits established for the specific project or activity for which bids are being taken, it is appropriate to incur some additional project expense in an effort to facilitate the provision of preference to Indian contractors and subcontractors. A descending scale of percentages (controlled by maximum dollar amounts in some instances) is provided, reflecting the Department's efforts to (1) control the project costs associated with the provision of the preference; (2) avoid discouraging qualified non-Indian bidders from submitting bids; and (3) provide the maximum possible opportunity to Indian-owned enterprises or organizations to compete for small and medium-sized contracts. (The Department's reasoning includes the expectation that, for major contracts in the upper reaches of the table included as part of § 905.204(c)(1)(ii), Indian-owned enterprises will have the experience, resources and sophistication necessary to match or closely approximate the bids of rival non-Indian enterprises, and accordingly will have less need for preferential treatment.)

Similarly, the proposed rule governing the RFP process (§ 905.204(c)(2)(ii)) have provided for mandatory minimum percentages of available rating points to be earmarked for the provision of Indian preference in evaluating proposals. Latitude is provided to the IHA to set out the criteria to be used in evaluating proposals—including criteria for the evaluation of the responsiveness of the proposals in providing for Indian preference, but consideration of these criteria—in every RFP situation—must lead to the award of no fewer than 15% of all rating points based on consideration of Indian preference in contracting. Another 10% of the rating points must be based on an evaluation of the responsiveness of a proposal's statement regarding the provision of employment and training opportunities and the proposal's predictions concerning the number of percentage of Indians anticipated to be employed and trained. (*See* § 905.204(e)(2)(ii).)

The Department particularly invites comment with reference to these provisions of the proposed rule. The provisions are aimed at meeting the statutory requirement that Indian preference be provided to the maximum extent feasible. Determination of what degree of preference will meet the statutory standard naturally requires balancing the interest of the Department and the IHA in controlling project costs against the need effectively to provide for the statutory preference. While the proposed rule reflects these considerations based on the Department's past experience with the Indian housing program and with contracting practices generally, suggestions for refinements in this process will be given every consideration when the final rule is developed.

Section 106 has been revised to incorporate the applicable statutory definitions of Indian, Indian Tribe, Indian Organization and Indian-owned economic enterprise for purposes of implementing section 7(6) of the Indian Self-Determination and Education Assistance Act. These statutory

definitions are included here because they differ from the definition of similiar terms used elsewhere in this Part. For example: The terms "Indian" and "Indian Tribe" are defined differently when considering eligibility for program participation, preference in training and employment, and preference in subcontracting. Accordingly, these definitions must be carefully scrutinized when determining eligibility for program participation or Indian preference. Questions arising concerning applicability for program participation or Indian preference shall be determined by HUD on a case-by-case basis.

Paperwork Reduction Act

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2577–0076.

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by the rule is not expected to be substantial. Approximately one hundred general construction contracts, large and small, are executed under the Department's Indian housing program each year.

This rule was listed as item number 959 in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44173, 44208) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 905

Grant programs: Housing and community development, Loan programs: Housing and community development, Low and moderate income housing, Public housing, Homeownership.

Accordingly, the Department proposes to amend 24 CFR Part 905 as follows:

1. The authority citation for 24 CFR Part 905 is revised to read as set forth below, and any authority citation following any section in Part 905 is removed.

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16 of the United States Housing Act of 1937, (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, and 1437n); Sec. 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

PART 905—[AMENDED]

2. In 24 CFR 905.106, paragraph (a) would be revised to read as follows:

§ 905.106 Preferences, opportunities, and nondiscrimination in employment and contracting.

(a) *Indian Self-Determination and Education Assistance (preference for Indians).* HUD has determined that Projects under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to "Indians", which are defined in that Act to mean persons who are members of an Indian tribe. That Act defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452. That Act defines: "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit: Provided, That such Indian ownership shall constitute not less than 51 per centum of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including corporations organized by Kenai, Jeneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

The language of this paragraph (a) cited above shall be included in all contracts executed by the IHA and all subcontracts arising out of contracts executed by the IHA.

* * * * *

3. Section 905.204 would be revised to read as follows:

§ 905.204 Indian Preference.

(a) *General.* (1)(i) This section outlines specific methods an IHA must follow to provide, to the greatest extent feasible, preference to Indian organizations and Indian-owned economic enterprises in contracting and subcontracting, and to Indians in employment and training. If, however, a tribal governing body enacts an alternate method of providing Indian preference within its jurisdiction and the Assistant Secretary for Public and Indian Housing subsequently approves the alternate method as meeting the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act for use in the HUD-assisted Indian housing program, the IHA under that jurisdiction shall implement the alternate method in lieu of the methods specified in this section. Alternate methods which provide for local tribal preference will not be approved. HUD will, however, consider for approval alternate methods which provide for local resident Indian preference, so long as such preference does not effectively exclude Indian organizations, enterprises, or individuals who are not resident within the Indian

governing body's jurisdiction. HUD's review of alternate methods of providing preference will include the extent to which the proposed method promotes competition, insures cost containment, reduces administrative burdens and furthers local priorities and objectives while providing effective Indian preference.

(ii) This section also contains, in paragraph (g), review procedures for complaints alleging inadequate or inappropriate provision of Indian preference. These complaint procedures are applicable to all complaints arising out of any of the methods of providing for Indian preference contained in this section, including alternate methods enacted and approved in the manner described herein.

(b) *Eligibility.*

(1) An applicant seeking to qualify for preference in contracting and subcontracting shall submit proof of Indian ownership to the IHA or contractor. Proof of Indian ownership shall include, but shall not be limited to:

(i) Certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. IHA's shall accept the certification of a tribe that an individual is a member.

(ii) Evidence relating to the stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(2) An applicant seeking to qualify for preference in employment and training shall submit, to the IHA or contractor, certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. IHA's and contractors shall accept the certification of a tribe that an individual is a member.

(3) An applicant seeking a contract or a subcontract shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or the contractor, as appropriate, that the applicant has the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the proposed contract (*see* also § 905.211). An applicant seeking employment and training shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or the contractor, as appropriate, that the applicant possesses the qualifications required for employment or training.

(4) If an IHA or contractor determines that an applicant is ineligible for Indian preference, the IHA or contractor shall so notify the applicant in writing before the award of the contract or before filling the position or providing the training sought by the applicant.

(c) *Indian preference in the award of contracts and subcontracts.*

(1) Preference in the award of contracts and subcontracts that are let under an Invitation for Bids (IFB) process (e.g., conventional bid construction contracts, material supply contracts) shall be provided as follows:

(i) The IFB may be restricted to qualified Indian-owned enterprises and Indian organizations. The IFB should not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned enterprises or organizations are likely to submit responsive bids. If two (or at the IHA's option, a specified larger number) or more qualified Indian enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian enterprises or organizations submit responsive bids, the IHA shall reject all bids, and shall readvertise the IFB in accordance with paragraph (c)(1)(ii) of this section.

(ii) If the IHA prefers not to restrict the IFB as described in paragraph (c)(1)(i), above, or if an insufficient number of qualified Indian enterprises or organizations submit responsive bids in response to an IFB under paragraph (c)(1)(i), the IHA or contractor shall advertise for bids inviting responses from non-Indian as well as Indian economic enterprises and from Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is (A) within budgetary limits established for the specific project or activity for which bids are being taken and (B) no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. "X" is determined as follows:

	X=lesser of—
When the lowest responsive bid is less than $100,000	10 pct of that bid, or $9,000.
When the lowest responsive bid is—	
At least $100,000, but less than $200,000	9 pct of that bid, or $16,000.
At least $200,000, but less than $300,000	8 pct of that bid, or $21,000.
At least $300,000, but less than $400,000	7 pct of that bid, or $24,000.
At least $400,000, but less than $500,000	6 pct of that bid, or $25,000.
At least $500,000, but less than $1 million	5 pct of that bid, or $40,000.
At least $1 million, but less than $2 million	4 pct of that bid, or $60,000.
At least $2 million, but less than $4 million	3 pct of that bid, or $80,000.
At least $4 million, but less than $7 million	2 pct of that bid, or $105,000.
$7 million or more	1 pct of the lowest responsive bid, with no dollar limit.

If no responsive bid by a qualified Indian enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(2) Preference in the award of contracts and subcontracts that are let under a Request for Proposals (RFP) process (e.g., for turnkey proposal construction contracts, professional service contracts) shall be provided as follows:

(i) The RFP may be restricted to qualified Indian-owned enterprises and Indian organizations. The RFP should not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned enterprises or organizations are likely to submit responsive proposals. If two (or, at the IHA's option, a specified larger number) or more qualified Indian enterprises or organizations submit responsive proposals, award shall be made to the qualified enterprise or organization with the best proposal. If fewer than the minimum required number of qualified Indian enterprises or organizations submit responsive proposals, the IHA shall reject all proposals and shall readvertise the RFP in accordance with paragraph (c)(2)(ii) of this section. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be

considered in awarding the contract, and shall state the relative importance the IHA places on each evaluation factor and subfactor.

(ii) If the IHA prefers not to restrict the RFP solicitation as described in paragraph (c)(2)(i), above, or if an insufficient number of qualified Indian enterprises or organizations satisfactorily respond under that procedure, the IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance of IHA places on each evaluation factor and subfactor. Notification that Indian preference is applicable to this procurement shall be included in the RFP solicitation.

(A) An IHA shall set aside a minimum of 15% of the total number of available rating points for the provision of Indian preference in the award of contracts and subcontracts. The percentage or number of points set aside for preference and the method for allocating these points shall be specified in the RFP.

(B) IHAs may require that contractors solicit subcontractors by using an RFP based on a point system, and that contractors set aside a minimum of 15% of the available rating points for the provision of preference in subcontracting. The RFP shall explain the criteria to be used by the contractor in evaluating proposals submitted by subcontractors.

(3) Provisions applicable to all contracts.

(i) In all cases, the IHA shall include in the IFB or RFP a description of the contract and subcontract bidding procedures which are to be employed, including a citation to paragraph (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(2)(i) or (c)(2)(ii) of this section, as appropriate. A finding by an IHA either that a subcontract was awarded without using the procedure required by the IHA, or that the contractor falsely represented that subcontracts would be awarded to Indian enterprises or organizations, shall be grounds for termination of the contract between the IHA and its contractor, or for other penalties as appropriate. Grounds for termination of the contract or for the imposition of other penalties shall be set out in the IFB or RFP and shall be included in each contract and subcontract.

(ii) Each IFB and RFP shall state whether the IHA maintains lists of Indian enterprises and organizations by speciality (e.g., plumbing, electrical, foundations), which are available to developers, contractors, and subcontractors to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

(iii) The IHA shall require a statement from all prospective contractors or developers describing how they will provide Indian preference in the award of subcontracts. Each IHA shall describe in its IFB or RFP (A) what provisions each prospective developer or contractor must include in its statement and (B) the factors that will be used by the IHA in judging the statement's adequacy. Any bid or proposal that fails to include the required statement shall be rejected as nonresponsive. An IHA may require that a comparable statement be provided by subcontractors to their contractors, and may require a contractor to reject any bid or proposal by a subcontractor that fails to include the statement, as specified by the IHA in the IFB or RFP.

(iv) Each contractor or subcontractor shall submit a certification (supported by credible evidence) to the IHA in any instances where the contractor or subcontractor believes it is infeasible to provide Indian preference in subcontracting.

(d) *Preference by an IHA in the contracting, employment and training.*

(1) To the greatest extent feasible IHAs shall adhere to the requirement for preference in contracting. Where the provision of preference is determined to be infeasible, an IHA shall document in writing the basis for its findings and shall maintain the documentation in its files for HUD review.

(2) To the greatest extent feasible, preference shall be given to qualified Indians for employment training for IHA staff positions. Each IHA shall document the method and justification used in selecting individuals for employment or training. A finding by HUD that an IHA has not provided preference to the greatest extent feasible to Indians in selecting individuals for employment or training shall be grounds for HUD to invoke its remedies under this Part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(e) *Preference by contractors and subcontractors in employment and training of Indians.*

(1) IFB Contracts.

(i) For contracts let under an IFB, the IFB shall state that each contractor and subcontractor must include in its bid response (A) a statement detailing its employment and training opportunities and its plans to provide preference to Indians in implementing the contract; and (B) the number or percentage of Indians anticipated to be employed and trained. The IFB shall explain the criteria to be used by the IHA or the contractor in evaluating contractor or subcontractor statements.

(ii) Any bid that fails to include the required statement, or that includes a statement that does not meet minimum standards required by the IHA or contractor (as appropriate) shall be rejected as nonresponsive.

(iii) Failure to comply with the submitted statement shall be a ground for cancellation of the contract or for the assessment of penalties or other remedies. The IFB and the contract shall describe the actions that may be taken by an IHA for noncompliance with the undertakings set out in the contractor's or subcontractor's statement.

(iv) A finding by HUD that an IHA has entered into a contract that failed to include an acceptable statement on preference in employment and training shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(2) RFP Contracts.

(i) For contracts let under an RFP, the RFP shall state that each contractor and subcontractor must include in its proposal response (A) a statement detailing its employment and training opportunities and its plan to provide preference to Indians in implementing the contract; and (B) the number or percentage of Indians anticipated to be employed and trained. The RFP solicitation shall explain the criteria to be used by the IHA or the contractor in evaluating contractor or subcontractor statements.

(ii) For contracts awarded under paragraph (c)(2)(i) of this section, (where a point system is not used to evaluate the relative merits of proposals), any proposal that fails to include the required statement, or that includes a statement that does not meet minimum standards required by the IHA or contractor (as appropriate), shall be rejected as nonresponsive. For contracts awarded under paragraph (c)(2)(ii) of this section (where a point system is used to evaluate the relative merits of proposals) ten percent of the total points available during evaluation of the proposal shall be awarded on the basis of the content of the statement. (These points are in addition to and separate from any points awarded for the provision of Indian preference in contracting or subcontracting in accordance with paragraphs (c)(2)(ii) (A)

and (B) of this section.) Proposals that fail to include a statement shall be rejected as nonresponsive.

(iii) Failure to comply with the submitted statement shall be a ground for cancellation of the contract or for the assessment of penalties or other remedies. The RFP and the contract shall describe the actions that may be taken by an IHA for noncompliance with the undertakings set out in the contractor's or subcontractor's statement.

(iv) A finding by HUD that an IHA has entered into a contract that failed to include an acceptable statement in implementing preference in employment and training opportunities shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(3) Provisions on employment or training applicable to all contracts. The IHA shall require contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions other than core crew positions, except where the contractor adequately advertises a position and no Indian either qualifies or accepts the terms of employment. The IHA shall indicate what it considers to be adequate advertisement in the IFB or RFP (as appropriate) and in the contract. A core crew employee is an individual who is (i) a bona fide employee of the contractor or subcontractor at the time the bid or proposal is submitted; or (ii) an individual who was not employed by the contractor or subcontractor at the time the bid or proposal was submitted, but who is regularly employed by the contractor or subcontractor in a supervisory or other key skilled position when work is available. Each contractor shall submit a list of all core crew employees with its bid or proposal.

(f) *Other preference provisions applicable to §§ 905.204 (c), (d), and (e).*

(1) When projects are developed or operated with financial assistance from both HUD and from non-Federal sources, the HUD Indian preference regulations shall apply to the HUD-funded portion of the project, if expenditures that are HUD-funded are segregable. If financial assistance from HUD and from non-Federal sources is intermingled, the HUD Indian preference regulations shall apply whenever more than half of the financial assistance for the development or operation of a project is from HUD.

(2) Each IHA shall be responsible for monitoring Indian preference implementation in subcontracting, employment, and training by its contractors and subcontractors. Should incidents of noncompliance be found to exist, the IHA shall take appropriate remedial action. A finding by HUD that the IHA has not provided adequate monitoring or enforcement of Indian preference may result in a determination by HUD that the IHA is in breach of the ACC or that the IHA lacks administrative capability. Such a finding may constitute adequate grounds for HUD to invoke its remedies under this part or under the ACC, which remedies shall include, but are not limited to, the denial of future projects.

(3) Preference in contracting, subcontracting, employment, and training applies not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(4) Each IHA should include in the IFB or RFP any applicable local preference requirements properly imposed by the local governing body, or should advise bidders to contact that local governing body to determine any applicable preference requirements.

(g) *Review procedures for complaints alleging inadequate or inappropriate provision of preference.*

(1) Each complaint (including complaints against an IHA) shall be in writing, signed, and filed with the IHA.

(2) A complaint must be filed with the IHA no later than 20 days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the IHA shall promptly acknowledge its receipt and shall investigate, and within 15 days shall either meet with or communicate by mail or telephone with the complaining party in an effort to resolve the matter. In all cases, but especially where the complaint indicates that expeditious action is required to preserve the rights of the complaining party, the IHA shall endeavor to resolve the matter as expeditiously as possible. If noncompliance with Indian preference requirements is found to exist, the IHA shall take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance. If the matter is not resolved to the satisfaction of the complaining party, or if the IHA has failed to communicate with the complaining party in an effort to resolve the complaint within 15 days following the IHA's receipt of a complaint, the complaining party may file a written complaint with the appropriate Indian Field Office of HUD. The address of the Indian Field Office and the name of the appropriate Indian program officer shall be included in the initial communication from the IHA acknowledging receipt of the complaint.

(4) Upon receipt of a written complaint, the HUD Indian Field Office will request that the IHA provide a written report setting forth all relevant facts, including, but not limited to: (A) the date the complaint was filed with the IHA; (B) the name of the complainant; (C) the nature of the complaint, including the manner in which Indian preference was or was not provided; and (D) actions taken by the IHA in addressing or resolving the complaint. The IHA shall provide copies of its report and all relevant documents concerning the complaint to HUD and to the complaining party within ten days after receipt of the HUD request.

(5) Upon receipt of the IHA's report, the HUD Indian Field Office will determine whether the actions taken by the IHA comply with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act, and with Indian preference requirements under this part. Notification of the Field Office's determination shall be provided to the IHA and to the complaining party, orally or in writing, no later than 30 days following HUD's receipt of the complaint. If the notice is oral, it shall be promptly confirmed in writing. If the complaining party's alleged injury will occur during this 30-day period, the HUD Indian Field Office will make a good faith effort to make its determination before the occurrence of such injury (e.g., contract award).

(6) Where the HUD Indian Field Office determines on the basis of the facts provided by the IHA and on the basis of other available information that there has been noncompliance with Indian preference requirements, the Field Office shall instruct the IHA to take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance.

(7) The decision of the HUD Indian Field Office may be appealed to the Assistant Secretary for Public and Indian Housing.

(Approved by the Office of Management and Budget under OMB control number 2577-0076)

Dated: December 24, 1985.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 86-105 Filed 1-2-86; 8:45 am]

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Part IV

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404, 416 and 422

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind and Disabled; Disability Hearings at the Reconsideration Level; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 416 and 422

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind and Disabled; Disability Hearings at the Reconsideration Level

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are amending the Social Security Administration (SSA) regulations to carry out Sections 4 and 5 of Pub. L. 97–455 (enacted on January 12, 1983). That legislation requires that on or after January 1, 1984, any disability beneficiary under title II of the Social Security Act (the Act) be given an opportunity for a face-to-face evidentiary hearing when he or she requests reconsideration of an initial determination that the physical or mental impairment on the basis of which benefits have been payable has ceased, did not exist, or is no longer disabling.

The rules will also make the new reconsideration procedure available in blindness and disability cessation cases in the Supplemental Security Income (SSI) program under title XVI of the Act after publication of these regulations, pursuant to the Secretary's rulemaking authority in the SSI program. Although Congress has not specifically required that we do so, it is customary to extend legislative changes in the title II disability program to comparable SSI cases, since the medical eligibility requirements in both programs are quite similar. Moreover, the inclusion of SSI blindness and disability cessation cases will promote effective program administration by providing a uniform appeal procedure in the two programs.

These rules were published as a Notice of Proposed Rulemaking on August 15, 1983 (48 FR 36831), with a 60-day period for public comments. We have made a number of substantive changes in the rules in response to the public comments, and technical changes on the basis of our own assessment. The most significant change is that the State Disability Determination Services (DDS) agencies will be permitted to establish their own adjudicatory units for conducting the face-to-face hearings. This and the other comments and changes are discussed in the supplementary information, which follows.

We believe that the new disability hearing procedures will make the reconsideration level more meaningful in blindness and disability cessation cases, that beneficiaries affected by these cessation decisions will be better assured of a fair and accurate determination on their continuing eligibility, and that the overall quality of the decisionmaking process will also be improved. We emphasize that the amended regulations will not affect the availability or scope of a hearing before an adminstrative law judge (ALJ) at the next level of the administrative appeals process.

DATES: *Effective date:* January 3, 1986. *Applicability date:* These rules are applicable with respect to requests for reconsideration filed in the affected title II cases on or after January 1, 1984, and in the affected SSI and concurrent title II—SSI cases on or after January 3, 1986.

FOR FURTHER INFORMATION CONTACT: Anita Dunn, Program and Procedures Branch, Office of Disability Hearings, Social Security Administration, (301) 597–0367.

SUPPLEMENTARY INFORMATION:

General Summary of the Public Comments and Our Responses

We received and gave consideration to nearly 50 written comments on the notice of proposed rulemaking. The majority of these comments were from legal services agencies and attorneys who represent title II and SSI claimants. Several State DDS and social services agencies also submitted comments. In addition, we received comments from the American Federation for the Blind, the American Psychiatric Association, the National Senior Citizens Law Center, the National Association of Retarded Citizens, and an advocacy group for disability beneficiaries known as "Not All is Lost" (NAIL).

In general, the commenters supported the concept of a face-to-face hearing at the reconsideration level but objected to some of the proposed procedures for the hearings. The commenters were especially critical of the rules for postponement of hearings and submittal of evidence after the close of a hearing, and of our interpretation that, as a general rule, a hearing location within 75 miles of an individual's residence is "reasonably accessible". In these and other respects, according to a number of commenters, the disability hearing procedure as proposed would not meet the minimum requirements for a full and fair hearing.

Although we believe the rules as originally proposed provide for a fundamentally fair hearing process that fully protects the due process rights of beneficiaries, we have made numerous changes and clarifications in the final rules in response to the public comments. We have attempted in the rules to balance the need for a full and fair hearing for each beneficiary with the need to process cases expeditiously and avoid delays. To the extent feasible, we have amended the final rules to better meet the needs of beneficiaries. We have also clarified several points which caused some commenters to interpret the proposed rules as more restrictive than we intended. We wish to emphasize, however, that we do not agree with those commenters who suggested that the proposed rules were "deficient" in terms of fairness to the beneficiary.

One aspect of the proposed regulations that was of particular concern to the public was the fact that, as a consequence of having an evidentiary hearing available at the reconsideration level in cases involving medical cessations of disability and blindness, the reconsideration level would now become the pre-termination review stage in SSI and concurrent title II—SSI cases involving these issues. As we pointed out in the preamble to the proposed rules, our existing regulations require SSI and concurrent title II—SSI medical cessation appeals to bypass the reconsideration level, and provide instead that an ALJ hearing is available before benefit payments are terminated. A number of commenters voiced strong opposition to the proposed rules on the grounds that the ALJ hearing, while it will still be available under the amended rules, would now come *after*, rather than before, the termination of benefits in SSI and concurrent title II—SSI cases. Many of the commenters felt that this result was unjustified, since (as we noted in the preamble to the proposed rules) Congress had only recently enacted legislation (Section 2 of Pub. L. 97–455) which temporarily permitted title II disability beneficiaries to continue to receive benefit payments until the issuance of an ALJ hearing decision when they appeal cessation determinations.

This problem was solved by the enactment on October 9, 1984, of Section 7 of Pub. L. 98–460. That section makes continued payment available through the month before the month of an ALJ hearing decision to SSI disability beneficiaries when they appeal cessation determinations made on or after October 9, 1984, or made earlier if the beneficiary filed a timely request for review or for a hearing. This provision for continued payment in SSI cases is permanent. (Section 7 of Pub. L. 98–460 also extends the provisions of Section 2

of Pub. L. 97–455 to title II cessation determinations made before January 1, 1988, and authorizes continued payment in those cases to as late as June 1988.)

We have not amended the final rules to omit SSI cases from the disability hearing process since we believe the reasons why many commenters urged that we do so are no longer relevant. We believe that the application of the disability reconsideration hearing process to SSI cases will promote more efficient and effective administration of the disability programs because it will result in similar treatment of title II and SSI beneficiaries in the appeals process.

Another aspect of the proposed rules which caused significant public comment was the provision for the appointment of federal (i.e., SSA) employees as disability hearing officers. A number of State DDS agency administrators informed us, either in comments on the proposed rules themselves, or in response to a letter we sent advising them of SSA's anticipated need to recruit and hire DDS employees as federal disability hearing officers, that they believed we should give the States the option of setting up their own hearing units to carry out the disability hearings, as permitted by Pub. L. 97–455. As discussed in greater detail below, we found the reasoning of these commenters persuasive, and have therefore amended the final rules to give the State agencies this option. Thus, under the final rules, the State agencies will have the authority to establish disability hearing units for the purpose of conducting disability hearings in accordance with the regulations. As a result, federal disability hearing officers will be appointed to hear only (1) cases where the State agency does not appoint a disability hearing officer, and (2) cases in which SSA (rather than a State agency) made the initial determination being appealed, such as those involving beneficiaries living abroad. We emphasize, however, that the procedures outlined in the regulations for the disability hearing process will apply to *all* disability hearings, regardless of whether the hearing officer is a State or a federal employee.

Finally, we also received a number of comments about the provision in the rules that "reasonably accessible" hearing sites can be at any location within 75 miles of the beneficiary's residence, and that reimbursement for travel expenses is available if the beneficiary travels more than 75 miles to his or her hearing. In response to many of those comments, we have changed the final rules to more clearly state that the beneficiary may request a change in time or place of his or her hearing. This will allow flexibility for claimants who are unable to travel to the assigned hearing site. We have concluded, however, that it would not be practical to change the regulations to require hearing locations closer than 75 miles from the beneficiary's residence, as several commenters suggested. Nevertheless, we wish to emphasize, as discussed further below, that SSA and the State agencies have the flexibility under the rules to establish hearing locations at sites closer than 75 miles from many beneficiaries' residences, and that we intend to do so to the extent feasible.

Background

A. Overview of the Social Security Disability Appeals Process

After an initial determination is made with respect to a claim for Social Security or SSI benefits, the claimant or beneficiary is given an opportunity to appeal. There are, in most cases, three steps in the administrative appeals process: (1) reconsideration; (2) hearing before an ALJ; and (3) Appeals Council review. After exhausting his or her administrative appeals, the claimant or beneficiary can then appeal to a U.S. district court. (The administrative decisionmaking process and the requirements for filing a civil action are described in existing regulations at 20 CFR Part 404, Subpart J (for title II cases) and Part 416, Subpart N (for SSI cases).)

In disability cases under title II, and in disability and blindness cases in the SSI program, one of the factors which must be addressed in the decisionmaking process is whether the claimant or beneficiary meets or continues to meet the medical requirements for disability or blindness. (With the exception of title II benefits for disabled widows, widowers and surviving divorced spouses, and SSI benefits for disabled children and blind individuals, the medical requirements for disability in these programs may include *vocational* considerations which help to determine whether an individual's impairment or combination of impairments makes him or her unable to work. This definition of the term "medical" created some confusion among the commenters on the proposed rules, and is discussed in greater detail below.) Initial determinations regarding medical factors, both in cases involving initial applications for benefits and in cases being reviewed for continuing medical eligibility, are generally made by State DDS agencies on behalf of SSA under the regulations at 20 CFR Part 404, Subpart Q, and Part 416, Subpart J.

When a claimant or beneficiary is dissatisfied with the DDS's initial determination, he or she can request that the determination be reconsidered. (However, in SSI and concurrent title II–SSI medical cessation cases, the DDSs do not conduct reconsiderations under existing regulations; instead, these appeals proceed directly to the ALJ hearing level, as discussed below.) The reconsideration is carried out by DDS personnel who did not participate in the initial determination. Like the initial determination, the reconsideration of a medical determination under existing regulations consists solely of a review of documentary evidence in the case file by DDS physicians and staff; the claimant or beneficiary who appeals an initial determination does not actually meet with a decisionmaker until the ALJ hearing.

B. Problems and Recent Changes in the Periodic Disability Review Process

In title II and SSI cases in which benefits are paid on the basis of blindness or disability, periodic reviews are necessary to ensure that individuals receiving these benefits are in fact blind or disabled under the requirements of the Act. (See 20 CFR Part 404, Subpart P, under the Subheading, "Continuing or Stopping Disability," and Part 416, Subpart I, under the Subheading, "Continuing or Stopping Disability or Blindness," for the pertinent provisions for periodic reviews of title II and SSI cases, respectively.) The Social Security Disability Amendments of 1980 (Pub. L. 96–265) required SSA to conduct, on an ongoing basis, a three-year periodic review for continuing disability in every title II disability case in which a permanent impairment does not exist, and at such times as the Secretary determines to be appropriate in every case involving a permanent impairment. (The legislative history of that provision indicates that Congress intended it to apply to the SSI program as well.) Under this congressional mandate, the number of cases reviewed for continuing eligibility increased substantially in recent years compared with past years.

The expanded review of disability cases confirmed congressional concerns that many individuals were continuing to receive disability benefits even though their impairments are not disabling. However, a number of problems emerged when SSA initially undertook this review, some of which resulted in hardship for beneficiaries and their families. In response to these

problems, SSA changed a number of its procedures and the Department supported the enactment of the disability provisions of Pub. L. 97–455 and Pub. L. 98–460 to improve the overall quality of the periodic review process and to ease its impact on beneficiaries.

The changes required by Pub. L. 97–455 improve the periodic review process in several respects. First, the required hearings at the reconsideration level, implemented under these amendments to the regulations, will enable the beneficiary who disagrees with an initial determination that he or she is not disabled or blind to meet face-to-face with a decisionmaker much sooner after the initial determination than under the prior appeals process. A second, temporary provision of Pub. L. 97–455, allowed title II beneficiaries to continue to receive benefit payments pending appeal of the initial determination through the ALJ hearing level through June 1984. However, this continued benefits provision, as extended by Pub. L. 98–118, applied only to cases in which an initial determination was made after enactment of the legislation and before December 7, 1983. Finally, Pub. L. 97–455 eases the requirements of the 1980 amendments by permitting SSA to limit the number of cases reviewed if necessary to prevent excessive workloads and backlogs in the process.

Pub. L. 98–460 requires changes to improve the periodic review process in several further respects. First, as mentioned above, it permanently extends continued payment until the issuance of an ALJ hearing decision to SSI medical cessation cases. It also extends the availability of continued payment in title II cases to cessation determinations made before January 1, 1988, and authorizes continued payment pending appeal in those title II cases to as late as June 1988. Second, it establishes new standards that we must use to determine whether a beneficiary is no longer disabled. Under this provision, we can, with certain exceptions, determine that a beneficiary is no longer disabled only if there has been medical improvement (related to his or her ability to work) and he or she is able to engage in substantial gainful activity. Third, it imposed a moratorium on reviews of all cases of mental impairment disability until we revised our disability criteria for mental impairments. These criteria were published as final regulations in 50 FR 35038 (August 28, 1985). Fourth, it requires us to issue regulations establishing standards for determining the frequency of periodic reviews. These standards were published as proposed regulations on June 18, 1985, at 50 FR 25400. Fifth, it requires us to notify beneficiaries, when we initiate a periodic review, that it could result in termination of benefits and of the beneficiary's right to give us medical evidence. Finally, it requires us to set up demonstration projects in which beneficiaries have the opportunity for a personal appearance before the determination about continuing disability is made instead of the hearing at the reconsideration level provided by these regulations.

The administrative actions taken by the Department to improve the periodic disability review process will complement the legislative changes required by Pub. L. 97–455 and Pub. L. 98–460. For example, we have reevaluated and redefined the criteria for permanent impairments, which are exempt from the three-year periodic review, thus reducing the number of cases subject to these reviews. (The new criteria are in the same regulations mentioned in the previous paragraph.) We adopted the practice of interviewing the beneficiary in person before the review process begins, to ensure that he or she understands the process and has an opportunity to update the medical evidence in his or her case file. In addition, we have instituted a number of changes in DDS procedures and quality assurance standards to enhance the accuracy of decisionmaking in continuing disability review cases.

Disability Hearings

A. General

As required by Sections 4 and 5 of Pub. L. 97–455, the amended regulations provide an opportunity for an evidentiary hearing at the reconsideration level in title II disability medical cessation cases and in comparable SSI cases pursuant to the Secretary's rulemaking authority. The new procedure is available for the reconsideration of an initial or revised determination that, based on medical factors, a beneficiary's impairment has ceased, did not exist, or is no longer disabling.

As a rule, then, a disability hearing will *not* be available in cases involving a new application for benefits. The only exception to this rule will be for those cases, traditionally few in number, in which a beneficiary who has requested reconsideration of a cessation determination also files a new application for benefits, and the new application is combined with the reconsideration request because of common issues. (This exception is discussed in Section (C), below.)

In our proposed rules, we referred to the new reconsideration procedure as a "disability *termination* hearing" (emphasis added), to stress that it would be limited in availability to disability cases in which eligibility based on medical factors is found to have terminated. However, upon reflection, we have decided to eliminate the word "termination" from the title of the new procedure, and instead call it simply a "disability hearing." We have made this change because we felt that "termination," while it adequately described the limited category of disability cases in which the new reconsideration procedure will be available, it did not appropriately describe the outcome of a particular disability hearing as benefits may or may not be terminated as a result of the reconsideration review.

We noted above that the disability hearing will be limited in availability to cases involving a *cessation* of disability, as provided by Pub. L. 97–455, and that it will therefore *not* be available in the reconsideration of initial determinations on new applications for benefits. (This includes cases in which it is determined that the claimant's disability began and ended in a certain period, known as a "closed period" of disability.) Other limitations with regard to non-disability and non-medical issues are discussed in Section D of the preamble, below. The disability hearing will thus have a more limited scope than the ALJ hearing at the next level of appeal, where all issues and all types of claims which are properly presented can be considered. In this context, we wish to emphasize that, as noted in the Conference Committee Report on H.R. 7093, the bill which became Pub. L. 97–455, the new reconsideration procedure "does not supplant or affect in any way the requirement of existing law for a hearing by an Administrative Law Judge." (H.R. Rep. No. 97–285, 97th Cong., 2d Sess., p. 11 (1982).)

We anticipate that the disability hearings will contribute to the overall quality of the process of reviewing cases for continuing medical eligibility. Most importantly, the beneficiary will have a prompt and meaningful opportunity to meet face-to-face with a decisionmaker at the reconsideration level when appealing an initial determination that, based on medical factors, he or she is not blind or disabled. Experience has shown that this type of procedure is most useful in protecting the rights of individuals in cases involving a cessation of eligibility.

In addition, the disability hearing process should encourage the beneficiary to submit all available evidence at the reconsideration level. To the extent that it does so, the new procedure should improve the quality of decisionmaking at this level, which in turn will enhance the quality and speed of adjudication at the subsequent levels of the appeals process. However, we emphasize that the amended regulations will not affect the beneficiary's right to present additional evidence at the ALJ hearing level.

Several commenters on the proposed rules expressed concern that the new disability hearing procedure could prolong the reconsideration stage and thereby contribute to delays in the appeals process. We do not believe that this will occur, for two reasons. First, we expect that the expansion of the reconsideration process to include a face-to-face hearing will not significantly lengthen that appeal stage, since the development phase of the process (which is likely to be the most time-consuming) will consist essentially of the existing reconsideration review, where there is no face-to-face contact and where delay is not a problem. Second, based on our experience in a pilot project in which the new hearing procedure was used, we believe the disability hearing will result in the final resolution of a significantly greater number of appeals at the reconsideration level, and thereby reduce workloads at the subsequent levels of the appeals process.

The pilot project was conducted in New Mexico, several cities in Texas, and in Oakland, California and vicinity. In the project, both federal SSA personnel and State DDS agency personnel were employed as hearing officers. The procedures used were essentially the same as those set out in these final rules. Disability hearings were scheduled in a total of approximately 1100 title II and SSI cases in which a participating DDS had determined that the beneficiary's impairment had ceased, did not exist, or was no longer disabling.

The results of the pilot project were very positive. In the first place, face-to-face hearings were unnecessary in about 18 percent of the pilot project cases because the DDSs favorably reconsidered their initial determinations as a result of their pre-hearing case file development. Of the approximately 800 project cases in which disability hearings were held, nerly 200, or approximately 24 percent, resulted in favorable outcomes for the beneficiaries. Consequently, there were, overall, more than twice the usual number of determinations favorable to the beneficiaries at the reconsideration level. These determinations were reviewed and found to be substantially correct in approximately 96 percent of the cases. Processing times were within normal ranges for reconsideration cases, even where hearings were held. Perhaps most importantly, many beneficiaries and their representatives in the pilot project also reported a high degree of personal satisfaction with the new procedure.

We believe that the success of the pilot project clearly demonstrates that the disability hearing procedure can substantially shorten both the duration and the expense of the appeals process, and that, by allowing earlier face-to-face contact with a decisionmaker, it is a significant improvement in the appeals process from the standpoint of the beneficiary.

B. Inclusion of SSI Cases

1. The Provisions of the New Rules with Regard to SSI. The amended regulations will make the disability hearing procedure available not just in title II disability cases as specifically required by the new statutory provisions, but also in comparable SSI cases. These include SSI blindness and disability cases in which an initial determination is made that the impairment on the basis of which benefits have previously been payable has ceased, did not exist, or is no longer disabling. We believe that the inclusion of SSI cases will promote more efficient and effective administration of the SSI program because it will result in similar treatment of title II and SSI beneficiaries in the appeals process.

Existing regulations, not yet revised to reflect section 7 of Pub. L. 98–460, nonetheless have for several years provided an opportunity for appeal in all SSI cases before benefits are terminated. (See 20 CFR 416.1415, Reconsideration procedures for post-eligibility claims, and § 416.1336, paragraph (b), *Continuation of payment pending an appeal.)* The pre-termination appeal in SSI cases is made available for nondisability issues at the reconsideration level. Benefits are terminated, if the reconsideration affirms the initial determination, although the beneficiary still has the right to appeal to the ALJ hearing level, and then to the Appeals Council, and finally to the U.S. court.

Under the existing regulations, a special post-eligibility procedure is followed in SSI appeals of *medical* (i.e., blindness and disability) issues. In these medical cessation cases, because no face-to-face appeal is presently available at the reconsideration level, the beneficiary is not given the opportunity for reconsideration but must instead proceed directly to the ALJ hearing level when he or she appeals an adverse initial determination. Thus, in this category of cases, the ALJ hearing is presently the first, rather than the second, level of appeal, and was therefore the pre-termination proceeding required under §416.1415. As a result, benefit continuation as provided in § 416.1336(b) is presently available in this group of cases until the issuance of an ALJ hearing decision. Concurrent title II–SSI medical termination appeals are also processed in this manner under existing regulations, since the medical issues are usually the same on both portions of the claim.

Although the above explanation of SSI post-eligibility appeals processing appeared in the preamble to the proposed rules, a number of commenters appeared to assume that the usual post-eligibility process includes the right to an ALJ hearing *before* benefits are terminated. We emphasize, however, that under existing SSI regulations, it is only *medical* cessation cases—i.e., termination cases involving medical disability or blindness issues—that the ALJ hearing is available prior to termination of benefits. In SSI termination cases based on non-medical factors, the ALJ hearing is available only *after* termination of benefits, following an opportunity for a pre-termination conference or, at the beneficiary's option, a case review, at the reconsideration level.

The procedures required by these regulations to provide disability hearings in title II cases under Pub. L. 97–455 will, for the first time, make it administratively feasible for us to provide a face-to-face hearing at the reconsideration level in SSI and concurrent title II-SSI medical cessation cases. Thus, we will no longer have to require that SSI and concurrent title II–SSI beneficiaries wait for an ALJ hearing in order to appeal an initial determination that they are not now blind or disabled. We are therefore revising §§ 404.930 and 416.1430, Availability of a hearing before an administrative law judge, and are making changes to other regulations in Parts 404, 416, and 422, to provide for an opportunity for a disability hearing at the reconsideration level when an SSI or concurrent title II–SSI beneficiary appeals an initial or revised determination that, based on medical factors, he or she is not blind or disabled. As a result, SSI and concurrent

title II–SSI medical cessation cases will have the opportunity for reconsideration of an adverse initial determination (which in these medical cessation cases will include an opportunity for a disability hearing) before appealing to the ALJ hearing level.

2. SSI Benefit Continuation. The strongest objections to the proposed rules came from individuals, agencies and advocacy groups who represent SSI claimants and beneficiaries in Social Security proceedings or who act as spokespersons on behalf of SSI claimants and beneficiaries in other contexts. These advocates opposed the inclusion of SSI cases in the disability hearing process if it meant (as it would have before enactment of Section 7 of Pub. L. 98–460) that SSI benefits could no longer be continued through the ALJ hearing level in medical cessation cases. Many of these commenters felt that it was anomalous for SSA to propose this change in the SSI program when Congress (1) had already temporarily permitted benefit continuation through the ALJ level in comparable title II cases, under Section 2 of Pub. L. 97–455, and (2) was considering extending these title II provisions under several bills (two of which, as mentioned above, became law).

As noted above in the general response to the public comments, Pub. L. 98–460 extends to SSI medical cessation cases the statutory provision for continuation of benefits through the month before the month of an ALJ hearing decision, and that extension alleviates the problem because now SSI disability beneficiaries may have both the disability hearing provided under these regulations and an ALJ hearing before their benefits are terminated.

Our primary purpose in promulgating these regulations is to make the disability hearing procedure available to any beneficiary who appeals an initial determination that a medical impairment on the basis of which benefits have been payable has ceased, did not exist, or is no longer disabling, regardless of whether the benefits at issue are title II benefits or SSI benefits. In enacting the statutory provisions requiring this procedure in title II cases, Congress expressed its preference for earlier face-to-face contact between the disability beneficiary and a decisionmaker than the existing regulations permit. We can conceive of no reasonable basis for not extending the new procedure to those SSI cases which present the same type of issues. This is especially true now that continuation of benefits through the ALJ hearing level applies by statute to SSI medical cessation determinations.

The regulations we are publishing today do no more than apply the usual SSI post-eligibility appeal procedure to medical cessation cases, and have no effect on the right to an ALJ hearing at the next level of the appeals process.

C. The Specific Adverse Determinations Subject to the New Reconsideration Procedure

Under Section 4(a) of Pub. L. 97–455, the beneficiary must have an opportunity for an "evidentiary hearing" when "the physical or mental impairment on the basis of which . . . benefits are payable is found to have ceased, not to have existed, or to no longer be disabling." In order to receive a disability hearing, then, the individual who requests reconsideration must be authorized to receive benefits on the basis of blindness or disability at the time the adverse determination is made. Thus, individuals who, having unsuccessfully applied for benefits, request reconsideration of the initial denial, will not be given the opportunity for a disability hearing in connection with the reconsideration of their claims.

Several commenters urged that the disability hearing procedure also be made available in cases involving a new application for benefits and not just in cases involving a cessation of present eligibility. They reasoned that, if the new procedure improves the fairness and effectiveness of the reconsideration level in cessation cases, it could accomplish this same result in new application cases as well. While we agree in principle with these observations, we have concluded that both the statute and legislative intent are clear that this new procedure applies to disability cessation cases in which reconsideration is requested on or after January 1, 1984. For this reason we have not included new application cases in this procedure. (However, we might note here that Section 6(e) of Pub. L. 98–460 requires us to conduct demonstration projects in at least five States in which the opportunity for a personal appearance is provided the new applicant prior to the initial disability determination.)

The above statutory language indicates that a cessation of eligibility for disability benefits can be based on one of several different determinations (i.e., that an impairment has ceased, did not exist, or is no longer disabling). These determinations, in turn, can result from different types of administrative review. The program established under the 1980 Amendments for reviewing cases with no-permanent impairments once every three years accounts for the majority of disability cases subject to review. (Cases of permanent disability are reviewed less often than every three years.) Other cases are scheduled for medical review sooner than three years after eligibility is first established because of an expected short duration of disability. In still other cases, an earlier determination is "reopened" and "revised", usually due either to the availability of new evidence or the discovery of an error in the earlier determination. (See 20 CFR Part 404, Subpart J, and Part 416, Subpart N, both under the Subheading, "Reopening and Revising Determinations and Decisions," for the pertinent regulatory provisions for the latter procedure.)

The amended regulations at §§ 404.914 and 416.1414 make a disability hearing available at the reconsideration level in any case in which it is determined that a disability beneficiary's eligibility has terminated based on medical factors. The specific determination reviewed in the disability hearing could be an *initial* determination resulting from a medical review, or a *revised* initial determination, based on medical factors, made after the reopening of a prior initial determination. In addition, if a prior, favorable *reconsidered* determination, based on medical factors, were reopened for the purpose of being revised, the beneficiary will be given an opportunity for a disability hearing before a revised reconsidered determination is issued. (See the revisions at §§ 404.992 and 416.1492, Notice of revised determination or decision, and §§ 404.993 and 416.1493, Effect of revised determination or decision, for the specific provisions for the *reopened* and *revised* determinations which will be subject to the disability hearing process.)

Occasionally a beneficiary will file a new application for benefits while his or her request for reconsideration of a cessation determination is still pending. This occurs only rarely, and when it does our practice has been to combine the new claim with the reconsideration request and to issue a combined initial/reconsidered determination which applies to the common issues on both claims. The combined determination can then be appealed to the ALJ hearing level, even though technically there may not have been separate initial and reconsidered determinations on the new claim. Although as a rule the scope of the disability hearing will be limited to the issue of medical *cessation* under paragraph (b) of §§ 404.914 and

416.1414, we have added a new paragraph (d), *Combined issues,* in the final rules which explains the treatment of cases in which a new claim is filed while a reconsideration request on a cessation determination is pending, when there are common issues in both claims. We believe that this paragraph, although in practice it will apply to only a very small number of cases, will remove any doubt as to how we process these cases.

D. Exclusion of Non-Medical and Other Ancillary Issues

There are several non-medical factors which, along with an individual's medical condition, can enter into a determination regarding continuing disability. A finding that an individual is engaging in substantial gainful activity is the most common example of a non-medical determination that an individual receiving benefits is not now disabled. Another example of a non-medical disability issue is the question of whether a beneficiary is participating as required in an approved State vocational rehabilitation program or, in certain SSI cases, in a drug addiction or alcoholism treatment program. Under the revised regulations, however, the scope of the disability hearings will be limited to medical issues only, because we believe that Congress did not intend any changes in the procedures presently used to reconsider non-medical initial determinations.

Several commenters suggested the final rules be revised to include non-medical disability issues in the disability hearing process. Medical (i.e., medical-vocational) issues and non-medical issues have traditionally been treated differently at both the initial and reconsideration levels because of the distinct nature of the factual determinations on these two types of issues. The determinations on these issues are made by separate components.

That is, medical issues are generally decided by the DDSs, while non-medical issues are decided by local Social Security office staff and other components within SSA. Moreover, if there is a non-medical basis for finding that a claimant or beneficiary is not eligible, we do not generally go on to develop the medical issues, since an individual who, for example, is engaging in substantial gainful activity, is not disabled under the statute.

Since the statute clearly includes only medical issues in this new procedure, we have decided not to extend the scope of the disability hearing to include non-medical disability issues.

Many of the same commenters also asked for clarification in the final regulations as to the definition of "medical" issues for purposes of the disability hearing process. The rules as proposed were somewhat ambiguous, the commenters suggested, since the existing disability program regulations specifically distinguish "medical considerations" (20 CFR §§ 404.1525–404.1530, and 416.925–416.930) from "vocational consideration" (20 CFR §§ 404.1560–404.1569, and 416.960–416.969). A number of commenters therefore concluded that, by limiting the scope of disability hearings to "medical" issues, we intended to exclude vocational considerations.

We regret that our proposed rules may not have adequately clarified that, for purposes of the disability hearing process, we intend "medical" issues to include issues which the DDS is empowered to decide under existing regulations, including "medical considerations" and "vocational considerations." This same inclusive definition of the term "medical" has been used in Subparts J and N of Parts 404 and 416, respectively, for a number of years, to distinguish those SSI and concurrent title II—SSI cessation cases that proceed directly to the ALJ hearing on appeal from those that proceed through the reconsideration level. We intended, but did not fully explain our decision, to adopt that same definition of the term "medical" in these amendments to Subparts J and N.

Under the amended regulations, the disability hearing also will not address any issues that are not related to blindness or disability, such as whether the beneficiary has received overpayments of benefits or, in SSI cases, how much income or resources can be attributed to the individual in redetermining his or her eligibility and benefit amount. Currently, if these issues happen to arise in a case which is terminated because of a finding that an individual is not now blind or disabled, they are subject to reconsideration by a component of SSA other than the DDS that makes and reconsiders the blindness or disability determination. The individual need not wait for these ancillary issues to be resolved before appealing the disability or blindness determination to the ALJ hearing level; instead, the blindness or disability appeal proceeds independently. Similarly, if, after a disability hearing, a reconsidered determination affirms the initial determination that an individual is not blind or disabled, that reconsidered determination will be immediately appealable to the ALJ hearing level under the amended regulations.

To the extent that non-medical issues do arise in the disability and blindness cessation cases in which the new disability hearing procedure is available, it will most likely be in SSI cases in which a determination on the basis of income and resources is also being contested by the beneficiary. In these cases, if a favorable reconsidered determination is made in the disability hearing process with respect to the blindness or disability issue, we will continue the administrative procedure presently used at the ALJ hearing level of advising the beneficiary that the question of whether he or she is still eligible for benefits now depends on the outcome of his or her appeal on the question of income and resources. Alternatively, if the determination that the individual is not blind or disabled is affirmed, the question of income and resources will generally not receive further consideration unless the blindness or disability determination is later changed, either on appeal or as a result of being reopened and revised.

A number of commenters felt that processing SSI income and resources issues separately from the medical issues at the reconsideration level would be confusing for beneficiaries and should therefore be changed in the final rules. However, as with non-medical disability issues, we have always decided disability and non-disability issues separately in cases under review for continuing eligibility, with no adverse effects on beneficiaries, and will continue to do so under these final rules for the disability hearing process. Thus, if an SSI beneficiary who receives an adverse determination regarding disability or blindness is sent a notice of an adverse determination on the issue of income or resources, our notice will clearly explain the procedure for appealing both determinations. We will continue to permit consolidation of the issues at the ALJ hearing level, as in the past, but for purposes of reconsideration the issues will be treated as separate appeals.

E. Optional State DDS Disability Hearing Units

Section 4 of Pub. L. 97–455 specifically provides that the reconsideration hearings in title II disability cessation cases may be conducted either by federal employees or by a unit in the State agency other than the unit that made the initial determination being appealed. It is the Secretary's responsibility under the statute to designate which approach will be used.

Our proposed rules provided for a joint State-federal approach to the new hearing process. Under this approach, a State DDS employee who had not participated in making the initial determination being appealed would review and update the evidence in the beneficiary's case file and would prepare the case for the disability hearing. The DDS would also have the authority to issue favorable reconsidered determinations on the basis of its review in appropriate cases. The actual face-to-face hearing would then be conducted in a reasonably accessible hearing unit by a disability hearing officer employed by SSA.

A number of Governors, DDS administrators and DDS employees urged that we permit the States the option of setting up hearing units in the State agencies to conduct disability hearings under Pub. L. 97–455. They contended that, contrary to our expectations, many States could provide reasonably accessible hearings to beneficiaries with only minimal disruption of their internal DDS operations. There would, moreover, be certain advantages in not having to transfer case files from a DDS development unit to a federal disability hearing unit in a different location. These commenters urged that the joint State-federal approach, as described in the proposed rules, be used only in those States which elect not to establish their own disability hearing units.

We found these arguments in favor of a State option persuasive, and have revised the final rules accordingly. Under the rules, the State agencies will have the option of deciding whether to establish a separate unit for the purpose of conducting disability hearings. Those State agencies which choose not to do so will carry out only the case preparation function as described in the rules at §§ 404.916(c) and 416.1416(c) (which includes the authority to issue favorable reconsidered determinations). In these States, the face-to-face hearings will be conducted by federal SSA employees. We have advised the Governors and the DDS administrators of our decision to give them this option and are actively working with them to assure that the new hearing procedure is available to beneficiaries who request reconsideration of cessation determinations on or after January 1, 1984, as required by Congress. The majority of the State agencies have chosen to conduct the face-to-face hearings, while some of the remainder will adopt the joint State-federal approach and a few are undecided at the time this is being written.

This change in approach, permitting the State agencies the option of establishing their own disability hearing units, is reflected in the final rules at §§ 404.915 and 416.1415, Disability hearing—Disability hearing officers. Paragraph (a) of these sections explains that the disability hearing will be conducted by a disability hearing officer who was not involved in making the determination being appealed, and that the disability hearing officer may be appointed by a State agency or by the Director of the Office of Disability Hearings or his or her delegate, as provided in paragraphs (b) and (c) of the new sections. Paragraph (a) also requires that the disability hearing officers appointed to conduct disability hearings, whether State or federal, must be experienced disability examiners, as we believe Congress intended based on the relevant legislative history of Pub. L. 97–455 and earlier legislative proposals for face-to-face reconsiderations.

Under paragraph (b), *State agency hearing officers*, in §§ 404.915 and 416.1415, the disability hearing officer may be appointed by a State agency if a State agency made the determination being appealed. If so, this individual must be employed by an adjudicatory unit of the State agency other than the adjudicatory unit which made the determination being appealed, as specifically required by Pub. L. 97–455. The term "State agency" is defined in paragraph (b)(2) as "the adjudicatory component in the State which issues disability determinations." We have chosen this definition to distinguish the DDS from the parent agency of which the DDS may be a part. The definition of the term "State agency" as it is used in paragraph (b)(2) of §§ 404.915 and 416.1415 is thus more specific than the definition of "State agency" used in our existing regulations governing disability determinations by the States (Subpart P of Part 404 and Subpart I of Part 416), which is generally understood to encompass the DDS's parent agency. Thus, under paragraph (b) of §§ 404.915 and 416.1415, only a unit in the State DDS agency, staffed by experienced DDS personnel, will be authorized to conduct disability hearings under the regulations.

Paragraph (c), *Federal hearing officers*, in §§ 404.915 and 416.1415, provides for the appointment of federal SSA employees to conduct disability hearings: (1) in cases where SSA, rather than a State agency, made the determination being appealed, and (2) in cases where the State agency does not appoint a disability hearing officer. The latter provision is intended to apply primarily to those States which elect not to establish disability hearing units, but would also permit the appointment of a federal hearing officer whenever hearings can be more efficiently or timely conducted by federal rather than State personnel. Thus, for example, if a State initially elects to establish a disability hearing unit but needs additional start-up time in order to do so, or has a temporary shortage of trained hearing officers, the regulations give SSA the flexibility to appoint federal hearing officers to conduct hearings. As noted above, the regulatory procedures for the conduct of the disability hearings under §§ 404.916 and 416.1416, Disability hearing—Procedures, will not vary according to whether a State or federal employee conducts the hearing.

F. The Specific Provisions of the Rules Governing Disability Hearings

1. General Provisions. We are adding a new § 404.913, Reconsideration procedures (for title II cases) and a new paragraph (d) in existing § 416.1413, Reconsideration procedures (for SSI cases), to explain that we will give the beneficiary an opportunity for a disability hearing as part of the reconsideration process in disability and blindness cessation cases. At this and at other places in the amended regulations, we use the term "*opportunity for* a disability hearing", to emphasize that although we will automatically schedule such a hearing in response to a reconsideration request in a disability or blindness cessation case (unless the hearing is specifically waived), the beneficiary will have an obligation to exercise his or her right to this hearing by attending or making a timely request for a change in time or place, as discussed below.

We have made a change in paragraph (a), *Case review*, of the new § 404.913, from the language which appeared in the proposed rules. The purpose of this paragraph, as its title suggests, is to describe the reconsideration process in cases in which a disability hearing (described in paragraph (b) of § 404.913) is not applicable. It was not intended to change any aspect of the existing case review reconsideration procedure in title II cases. However, we inadvertently used language in paragraph (a) of § 404.913 in the proposed rules which describes the existing case review process in *SSI* cases. (See 20 CFR 416.1413(a).) The SSI case review process includes an opportunity to review the evidence in our files in addition to the right to present additional evidence. Unlike SSI case

reviews, however, the reconsideration process in many title II cases is carried out in a handful of regional processing centers rather than in local Social Security offices, making it impractical to routinely offer access to the file in these cases. We have therefore changed paragraph (a) of § 404.913 in the final rule to be consistent with the existing title II case review reconsideration process. In the hearings process the file is available for review as described in §§ 404.916a(3) and 416.1416a(3).

The regulatory provisions for the disability hearing will be part of the reconsideration regulations and are designated as new §§ 404.914 through 404.918 and §§416.1414 through 416.1418. (Several regulation sections presently in those two numerical series are being redesignated to accommodate the new sections.) The new material is identical for title II cases (the Part 404 series) and for SSI cases (the Part 416 series), except that the SSI regulations refer to blindness as well as disability.

The two series of new regulation sections for the disability hearings begin with §§ 404.914 and 416.1414, Disability hearing—General. Paragraph (a) of these sections, *Availability,* provides that a disability hearing will be available at the reconsideration level after we make an initial or revised determination that an individual presently receiving benefits is not blind or disabled due to medical reasons. Paragraph (b), *Scope,* explains that the disability hearing will be available only to reconsider this medical determination, and that other issues will be reviewable through regular reconsideration procedures under §§ 404.913 and 416.1413.

2. Time and Place of the Disability Hearing. Paragraph (c), *Time and Place,* of §§ 404.914 and 416.1414, provides that either the State agency or the Director of the Office of Disability Hearings or his or her delegate, as appropriate, will set the time and place of the disability hearing, and that the notice of the time and place of the hearing will be mailed or served at least *20 days* before the date of the hearing. This paragraph also explains that individuals may be expected to travel to their disability hearings, and that costs of the beneficiary's, representative's and unsubpoenoed witnesses' travel of more than 75 miles one-way to the hearing location are reimbursable. Finally, paragraph (c) explains that the time or place of the disability hearing will be changed at the beneficiary's request, if there is good cause for the change as illustrated by the examples in existing regulations at 20 CFR 404.936 (c) and (d) and 416.1436 (c) and (d).

(Note.—The latter provisions, permitting the beneficiary to request a change in time or place of the disability hearing, were not contained in paragraph (c) of §§ 404.914 and 416.1414 as it appeared in the proposed rules. Instead, there was in the proposed rules a paragraph entitled *Postponement of your disability hearing* in §§ 404.916 and 416.1416, Disability hearing—Procedures. Upon reflection, we have concluded that all of the provisions pertaining to time and place of disability hearings should be set out in one section, and have amended paragraph (c) accordingly. In addition, we have deleted from §§404.916 and 416.1416 a provision regarding notice of time and place, since it merely repeated the information contained in paragraph (c) of §§ 404.914 and 416.1414.)

As required by Section 4 of Pub. L. 97–455, disability hearings will be available at "reasonably accessible" sites, which we interpret to mean either within 75 miles of the beneficiary's residence, or, if beyond 75 miles from the beneficiary's residence, with reimbursement available for travel expenses. This is the standard presently used for ALJ hearing locations.

(Note.—Section 201(j) of the Social Security Act limits reimbursement to travel within the United States.)

The provision of paragraph (c) requiring that notice of the time and place be sent to the beneficiary at least *20 days* before the date of the disability hearing is a change from the proposed rules, which would have required that the beneficiary receive *10 days'* notice of the time and place. We have made this change in response to a number of commenters who suggested that in some cases 10 days would not constitute adequate notice of the time and place of hearing, and that the final rules should be revised to provide additional notice. We wish to explain that the proposed 10 days' notice was intended as an assurance that the beneficiary would receive *at least* 10 days' notice of the time and place, and that it would not have precluded providing *more* than 10 days' notice. In proposing a minimum of 10 days' notice, we were concerned about the possible adverse effects on processing times at the reconsideration level if more than 10 days' notice were required. On balance, however, we are persuaded that the need of many beneficiaries for more than 10 days' notice of the time and place of their hearings is sufficient to justify a requirement that the notice be mailed or served at least *20 days* before the date of the hearing.

Other commenters on the proposed rules were critical of what they perceived as a lack of specific requirements for the notices concerning the disability hearing process. However, we believe that the regulations (both in paragraph (c) of §§ 404.914 and 416.1414 and in paragraph (b), *Your procedural rights,* in §§ 404.916 and 416.1416, described below) assure that the beneficiary will receive adequate notice not only about the time and place of the disability hearing but also about his or her rights and responsibilities in connection with the entire reconsideration process. We believe, moreover, that many of the comments reflect an imperfect understanding of the extent to which we do attempt to assure adequate notice to beneficiaries about their rights to appeal an adverse determination resulting from a continuing disability review. We offer the following explanation to assure better understanding of our commitment to adequate notice.

It is important to recognize at the outset that the notice of the time and place of the disability hearing referred to in paragraph (c) of §§ 404.914 and 416.1414 is the last of three separate, written explanations the beneficiary receives concerning both the appeals process in general, and the disability hearings process in particular. In addition, the disability beneficiary is given two opportunities to meet with a Social Security claims representative in a local office, where the process is explained person-to-person.

As a first step in any continuing disability review, before the actual review begins, the beneficiary is interviewed in a local Social Security office, where the review process and the right to appeal from an adverse determination are explained. In this pre-review interview, the beneficiary is reminded of the importance of submitting or bringing to our attention any additional medical evidence which, if necessary, we can then procure on the beneficiary's behalf, to update the medical file. The beneficiary, of course, may also ask any questions about the review or the appeals process. If a cessation determination is made as a result of the review, the cessation notice further explains the appeals process and the right to continued benefits pending appeal.

When the beneficiary requests reconsideration of a cessation determination, a Social Security claims representative again meets with the beneficiary at a local office, where the reconsideration process and the disability hearing procedure are explained in detail. The beneficiary is again encouraged to tell the Social Security office about any additional sources of medical evidence which SSA can incorporate into the case file. The beneficiary at the reconsideration

request interview will also be given a printed handout which explains the disability hearing process in detail.

It is only after this series of interviews and written notices that the beneficiary, at least 20 days before the disability hearing, will be sent the notice of the time and place of the hearing, to which the new §§ 404.914(c) and 416.1414(c) refer. We believe that these efforts are more than sufficient to assure that the beneficiary understands the importance of the continuing disability review process in general and the disability hearing process in particular.

Many commenters also objected to our proposal that "reasonably accessible" hearing locations could be at any distance within 75 miles of the beneficiary's residence, or at locations beyond that distance when travel expenses were reimbursed. These commenters felt that the 75-mile rule, as they understood it, would be unduly harsh for beneficiaries who are sick or handicapped and who might also lack financial and other resources needed for transportation. They suggested that the final rules be revised to require more accessible hearing locations and to provide reimbursement of all beneficiary travel costs, regardless of distance.

We believe that, depending on such factors as population dispersion, caseloads, and availability of office space, it should be possible to provide the great majority of disability hearings at locations much less than 75 miles from the beneficiary's residence. Our purpose in advising the public of the 75-mile rule in the disability hearing regulations is not to suggest that 75 miles will be the typical or average of travel distance required to attend a disability hearing, but merely to establish the outer limit of what we believe to be a "reasonably accessible" distance for beneficiaries to travel to hearings where reimbursement is not provided. We have not, therefore, revised the final rules to require hearing locations less than 75 miles from every beneficiary's residence, as a number of commenters suggested.

Under paragraph (c) of §§ 404.914 and 416.1414, reimbursement of beneficiaries', representatives', and unsubpoenaed witnesses' travel costs will be available in the disability hearing process, but only when these individuals travel more than 75 miles one-way to the hearing site. This is the longstanding rule applied by SSA with regard to claimant or beneficiary travel to other appeal proceedings, including ALJ hearings. Indeed, in SSI cases, since October 1, 1981, Congress has mandated this rule in HHS appropriation acts which includes SSA. We believe that it represents a reasonable accommodation of the competing concerns of accessibility of our facilities to claimants and beneficiaries, and administrative budget limitations. Therefore, and because disability hearing sites are being selected at locations which are as close as possible to the maximum number of beneficiaries' residences, we have decided not to amend the final rules to permit reimbursement to beneficiaries who travel less than 75 miles to their disability hearings.

Finally, as noted above, paragraph (c) of §§ 404.914 and 416.1414 specifically provides that the beneficiary may request a change in the time or place of his or her disability hearing for good cause. There is thus a degree of flexibility in the rules for accommodating the needs of beneficiaries who cannot attend a disability hearing at the scheduled time and place. In this regard, we note that the final rules do not require the beneficiary to request a change in time or place at least 10 days before the date of the hearing, as the proposed rules would have provided, but instead simply encourage the beneficiary to request such a change "at the earliest possible date." Many commenters felt that the provision in the proposed rules requiring that such requests be made at least 10 days before the hearing was unduly restrictive and likely to result in hardship in some instances.

3. Disability Hearing Procedures. The new §§ 404.916 and 416.1416, Disability hearing—Procedures, set forth the procedures to be followed in the disability hearing process. Paragraph (a), *General,* describes when and for what purpose the disability hearing is available. Paragraph (b), *Your procedural rights,* provides that we will advise the beneficiary of his or her right to be represented, to review the evidence in his or her case file and to present additional evidence, to appear at the disability hearing, and to bring and to question witnesses at the hearing.

A number of commenters expressed concern about the need for procedures to assure that the beneficiary has a full opportunity to present new evidence and to challenge adverse evidence in connection with the disability hearing process. In response to these concerns, we have added to paragraph (b) of §§ 404.916 and 416.1416 a provision explaining that the beneficiary may request assistance in obtaining evidence and that, if necessary, a subpoena be issued. Although we believe it will rarely be necessary to actually exercise the subpoena power in the disability hearing process, we agree with the suggestion of several commenters that its availability may help to facilitate the production of useful evidence or testimony in some cases.

We have also strengthened the language in paragraph (b) of §§ 404.916 and 416.1416 regarding the right to examine the case file before the disability hearing, in response to a number of commenters who felt that the rules were lacking in this regard. Paragraph (b), as amended, now provides that the case file will be available for inspection at the disability hearing site on the day of the hearing, and that other arrangements for earlier inspection can be made at the request of the beneficiary or his or her representative. (Under the new §§ 404.918 and 416.1418, which are discussed below, there is an additional right to inspect pertinent materials in the case file when the Director of the Office of Disability Hearings or his or her delegate proposes to issue an unfavorable reconsidered determination which changes in some way the reconsidered determination prepared by the disability hearing officer.)

Paragraph (b)(5) of §§ 404.916 and 416.1416 permits the parties to waive the right to appear at the disability hearing, in which case the disability hearing officer will issue a written reconsidered determination based on the evidence in the case file. Under this provision, the disability hearing officer will also issue a written reconsidered determination based on the evidence in the case file if a party fails to appear at the disability hearing without notifying us in advance that he or she will not attend.

In the preamble to our proposed rules, we stated our belief that issuing a reconsidered determination on the basis of the evidence in the case file would be the best way to dispose of cases at this level when the parties fail to appear for a scheduled hearing. Several commenters disagreed and suggested that we instead institute a procedure such as that used at the ALJ hearing level whereby the individual who fails to appear at a scheduled hearing is ordinarily sent a notice requiring him or her to show cause for the non-appearance. In the ALJ procedure, if the individual does not show cause, there is no determination on the merits of the claim; the case is simply dismissed by the ALJ. At the request of the claimant or beneficiary, the ALJ's dismissal may later be vacated by either the ALJ or the Appeals Council, but it is only after the dismissal is vacated that the claimant or beneficiary can receive a new

opportunity for a hearing and decision on the merits of his or her claim.

We continue to believe that, at the reconsideration level, the fairest and most expeditious way of treating cases in which the beneficiary fails to appear at a scheduled hearing is for the hearing officer to decide the case on the merits without a hearing rather than instituting show-cause and dismissal procedures. The hearing officer's reconsidered determination might be favorable or unfavorable to the beneficiary, but in any event will be appealable on the merits to the ALJ hearing level, where the beneficiary will have a new opportunity for a hearing.

The provisions describing the preparation of case files in support of the disability hearing process are contained in paragraph (c) of the new §§ 404.916 and 416.1416. Although in most cases this function should be completed before the hearing itself, paragraph (c) will also permit cases to be referred back to the originating component for additional preparation at any time before the reconsidered determination is issued.

Paragraph (d) of §§ 404.916 and 416.1416 permits the issuance of a fully favorable written reconsidered determination without holding a disability hearing in appropriate cases. Both the unit responsible for preparing cases for the disability hearing and the disability hearing officers will have the authority to issue these fully favorable reconsidered determinations without a hearing under paragraph (d). When a case is favorably disposed of in this manner, the beneficiary will be notified that, because of this favorable outcome, a disability hearing will not be held.

Paragraph (e), *Opportunity to submit additional evidence after the hearing*, in §§ 404.916 and 416.1416, will enable the disability hearing officer to keep the case file open for up to 15 days after the end of the hearing at the beneficiary's request for receipt of additional evidence which the disability hearing officer determines to have a direct bearing on the outcome of the hearing. Under paragraph (e)(2), the case file will be held open only when evidence necessary for reaching a reconsidered determination could not have been obtained prior to the hearing.

Numerous commenters wrote that they considered the provisions of paragraph (e) harsh and therefore inconsistent with the underlying intent of Congress to make the reconsideration process fairer and more meaningful for disability beneficiaries. They suggested that, instead of making it easier for the beneficiary to fully present his or her case at the reconsideration level, the restrictions on submittal of evidence after the date of the disability hearing under paragraph (e) would make it more difficult. We believe, however, that our procedures for notifying beneficiaries about the disability hearing process, and the consistent emphasis in our notices and interviews on securing updated medical evidence, make it unnecessary to have a more open-ended period for securing evidence *after* the disability hearing. When understood in this context, we believe that the 15-day limitation on post-hearing submittal of evidence under paragraph (e) is reasonable and unlikely to impose undue hardship on any beneficiary.

In response to the concerns of a number of commenters, we have added to §§ 404.916 and 416.1416 a new paragraph (f), *Opportunity to review and comment on evidence obtained or developed by us after the hearing*. This paragraph provides that the beneficiary will be given 10 days (or additional time, for good cause) to review and comment on any evidence obtained or developed by SSA or a State agency for any reason after the date of the disability hearing, if all evidence taken together would support a reconsidered determination that is unfavorable to the beneficiary. We have added this paragraph to clarify that a reconsidered determination that is unfavorable to the beneficiary with regard to the medical factors of eligibility will not be made until the beneficiary has had an opportunity to review and comment on all of the evidence. While the rules as originally proposed were clear as to the beneficiary's right to a hearing, a number of commenters felt that the proposed rules left a gap in the protections provided to beneficiaries with regard to evidence developed or otherwise obtained *after* the hearing. While no such gap was intended, we agree that the rules should clearly state that the beneficiary has the right to comment on any evidence that might be used to support an unfavorable reconsidered determination with regard to his or her medical eligibility.

We do not expect that additional evidence will be developed in a significant number of cases after the close of the disability hearing, nor do we expect that a supplemental hearing will be necessary in most of those cases where additional evidence is developed. Paragraph (f) does provide, however, that a supplemental face-to-face hearing may be scheduled at the beneficiary's request for the purpose of permitting the beneficiary to comment on any additional evidence. Otherwise, under paragraph (f), the beneficiary will be given the opportunity to submit written comments or, in appropriate cases, telephone comments, on the additional evidence. (We have also amended the final rules to provide for a right to comment, in writing, before an unfavorable reconsidered determination is issued by the Director of the Office of Disability Hearings or his or her delegate under the pre-issuance review process described in §§ 404.918 and 416.1418. Those provisions are discussed below.)

4. The Disability Hearing Officer's Reconsidered Determination. The new §§ 404.917 and 416.1417, Disability hearing—Disability hearing officer's reconsidered determination, contain four paragraphs. Paragraph (a) of these sections, *General*, provides that the disability hearing officer will in most cases have the authority to issue a binding written reconsidered determination. There are three exceptions to this general rule provided in paragraph (a): (1) the case may be returned by the hearing officer to the case development unit for further action, after which that unit issues a favorable reconsidered determination in accordance with paragraph (d) of §§ 404.916 or 416.1416; (2) it may be determined that the beneficiary is engaged in sustantial gainful activity and is therefore not disabled; or (3) the reconsidered determination prepared by the hearing officer may be reviewed under §§ 404.918 or 416.1418 (discussed below). Under paragraph (b), the disability hearing officer's reconsidered determination must be based on the evidence in the case file, including evidence and testimony presented at the disability hearing.

Paragraph (c) *Notice*, in §§ 404.917 and 416.1417, provides that the beneficiary will be notified, in writing, of the reconsidered determination after the disability hearing. We have deleted from these sections the provision contained in the proposed rules which would have required that the beneficiary be notified of the reconsidered determination within 60 days of the date of the disability hearing, or the date of the closing of the case file, if later. We will, of course, strive to assure prompt completion of the post-hearing functions of preparing and, in selected cases, reviewing hearing officer reconsidered determinations. However, we do not believe it would be appropriate or feasible to establish binding regulatory time limits for these activities under present circumstances, since the face-to-face hearing function has never before been carried out in the State agencies on a large-scale, ongoing basis.

Paragraph (d), *Effect*, in §§ 404.917 and 416.1417, explains that the reconsidered determination issued either by the disability hearing officer under paragraph (a) or by the Director of the Office of Disability Hearings or his or her delegate under §§ 404.918 or 416.1418 is binding as provided by existing reconsideration regulations, the redesignated §§ 404.921 and 416.1421, Effect of a reconsidered determination. (The latter sections provide that a reconsidered determination is binding unless it is appealed within 60 days after notice of the reconsidered determination is received, or unless it is later revised.)

5. Review of the Hearing Officer's Reconsidered Determination Before it is Issued. The last of the new regulatory sections, §§ 404.918 and 416.1418, Disability hearing—Review of the disability hearing officer's reconsidered determination before it is issued, give the Director of the Office of Disability Hearings or his or her delegate the authority to review and, if necessary, correct the reconsidered determination prepared by the disability hearing officer before it is issued. This authority will permit a quality assurance review of a sample of hearing officer determinations and will carry out the Congressional directive that the Secretary undertake pre-effectuation review of disability determinations. A comparable review process is presently conducted by SSA with respect to reconsidered determinations prepared by the State agencies.

Paragraph (a), *General*, in §§ 404.918 and 416.1418, explains that this review authority will be used to assure that the disability hearing officer's reconsidered determination is correct. The Director of the Office of Disability Hearings may review a case to determine its correctness on any grounds he or she deems appropriate. Only a sample of cases will be reviewed; most of the reconsidered determinations prepared by the hearing officers will simply be issued by the hearing officers shortly after the conclusion of the hearings and the closing of the case files. Under paragraph (a), if a case is reviewed and no deficiency is found, the reconsidered determination prepared by the disability hearing officer will be dated and issued upon completion of the review.

If a deficiency requiring correction is found as a result of the review, under paragraph (b)(1) of §§ 404.918 and 416.1418, the Director of the Office of Disability Hearings (ODH) or his or her delegate may send the case back either to the disability hearing officer or to the case preparation unit for appropriate further action. Paragraph (c) of §§ 404.918 and 416.1418 provides that, in a case returned by the Director or his or her delegate to the State agency (i.e., to either the unit that prepared the case for the hearing, or to the disability hearing officer), the disability hearing procedures of §§ 404.916(f) and 416.1416(f) would apply.

Under paragraph (b)(1) of §§ 404.918 and 416.1418, cases with deficiencies in the manner or scope of development of the evidence would be returned to the component that prepared the case for hearing. The provisions of paragraph (f) of §§ 404.916 and 416.1416, described above, would assure that the beneficiary has an opportunity to review and comment on any new evidence developed as a result of this action when all evidence considered together would support an unfavorable reconsidered determination. This may include an opportunity for a supplementary hearing. Alternatively, if the deficiency found by the Director or his or her delegate has to do with the manner in which the case was treated by the hearing officer, it would be returned directly to the hearing officer. By its nature, a case returned to the disability hearing officer would generally require the hearing officer to schedule a supplementary hearing with the beneficiary, particular when the hearing officer's original determination is favorable to the beneficiary and the Director's return of the case to the disability hearing officer could result in an unfavorable determination.

Paragraph (b)(2) of §§ 404.918 and 416.1418 gives the Director of ODH the authority to issue his or her own reconsidered determination when the reconsidered determination prepared by the hearing officer contains a deficiency which can be corrected in this manner. This procedure, including the beneficiary's right to comment on the Director's proposed action before it is taken, is described below. However, we wish to clarify that, at least until a considerable amount of experience with the new hearings and the review process is obtained, the Director of ODH will not, as a rule, exercise this authority to change hearing officer decisions, but will instead rely exclusively on the alternative action of sending the case back either to the component that prepared the case for hearing or to the disability hearing officer under paragraph (b)(1), as described above.

If, as permitted by paragraph (b)(2), the Director or his or her delegate proposes to issue a reconsidered determination which corrects a deficiency found in the hearing officer's reconsidered determination, and the Director's reconsidered determination is not fully favorable to the beneficiary on the issue of medical eligibility, paragraph (d) of §§ 404.918 and 416.1418 gives the beneficiary the right to review and submit written comments on the Director's reconsidered determination before it is issued. This paragraph also gives the beneficiary the right to inspect pertinent material in his or her case file before submitting his or her comments. Generally, the pertinent file materials would include any medical evidence relied on by the Director or his or her delegate in the review process as well as any documents prepared after the hearing, such as the reconsidered determination prepared by the disability hearing officer. Under paragraph (d), the beneficiary will be given 10 days from the date he or she receives a copy of the Director's proposed action to submit his or her comments, unless additional time is necessary to provide access to the pertinent file materials or there is good cause for providing more time, as illustrated by the examples in §§ 404.911(b) and 416.1411(b).

Unlike the new paragraph (f) in §§ 404.916 and 416.1416 (discussed above), there is no provision for requesting a supplemental hearing under paragraph (d) of §§ 404.918 and 416.1418. Paragraph (d), *Opportunity to comment before the Director or his or her delegate issues a reconsidered determination that is unfavorable to you*, as the title indicates, applies only to cases in which a deficiency found in the review can be corrected by the Director or his or her delegate without returning the case to the hearing officer or the case preparation unit for appropriate further action. (Cases returned to the hearing officer or to the case preparation unit under paragraph (b)(1) of §§ 404.918 and 416.1418 will come under the rule in §§ 404.916(f) and 416.1416(f), *Opportunity to comment on evidence obtained or developed by us after the hearing.*)

We believe that it adequately protects the rights of the beneficiary to provide an opportunity for only *written* comments before the Director or his or her delegate issues an unfavorable reconsidered determination in a case where the deficiency found by the Director is of the sort which can be corrected under paragraph (b)(2) of §§ 404.918 and 416.1418. (Of course, no opportunity for comment is necessary when the reconsidered determination is favorable to the beneficiary.) We believe that permitting other methods of comment on the materials prepared by the Director or his or her delegate in the

review process, such as the right to request a supplemental hearing, is unnecessary in cases where the Director proposes to correct a deficiency by issuing an unfavorable reconsidered determination (rather than sending the case back for correction by the case preparation unit and the hearing officer). The Director will be in a position to take this action only on the basis of the case file that was available to the hearing officer when the hearing officer prepared his or her reconsidered determination, with respect to which the beneficiary has already had an opportunity for a hearing. Cases containing deficiencies requiring additional face-to-face contact with the beneficiary will be sent back to the hearing officer under paragraph (b)(1) of §§ 404.918 and 416.1418, and will not be decided by the Director or his or her delegate under paragraph (b)(2).

We emphasize that under paragraph (a) of §§ 404.918 and 416.1418, both favorable and unfavorable reconsidered determinations prepared by disability hearing officers will be subject to review, since deficiencies may occur in either situation. We believe that these provisions, permitting pre-issuance review and, as necessary, correction of deficiencies found in the reconsidered determinations prepared by disability hearing officers, will help to assure consistent decisional quality in the new disability hearing process. We expect that in most cases this review can be completed in a short time after the date of the disability hearing and the closing of the case file, so that the review will not result in undue delay.

Other Related Changes

The regulations in Subpart P of Part 404 and in Subpart I of Part 416, both entitled, "Determining Disability and Blindness," are not affected by the new reconsideration procedure, with one exception. The existing regulations in both subparts include a section on the responsibility for assessing and determining a disability claimant's residual functional capacity (§ 404.1546 and 416.946). Because the assessment of residual functional capacity is part of the decisionmaking process, these assessments will be the responsibility of the disability hearing officers (both State and federal) in the disability hearing process. We are therefore revising §§ 404.1546 and 416.946 accordingly.

We are also changing a number of the titles in the regulation sections governing ALJ hearings (§§ 404.929 through 404.961 and §§ 416.1429 through 416.1416). The new titles use the expression, "hearing *before an administrative law judge*" (emphasis added), to distinguish between these hearings and the new disability hearings at the reconsideration level.

Finally, we are making several technical conforming revisions in 20 CFR Part 422, Organization and Procedures. Specifically, we are revising § 422.140, Reconsideration of initial determination, and § 422.203, Hearings, to account for the new disability hearing procedure at the reconsideration level.

Authority

The revisions with respect to title II disability cases are required by Section 4 of Pub. L. 97-455, which amends Section 205(b) of the Social Security Act (42 U.S.C. 405(b)), and by Section 5 of Pub. L. 97-455. These revisions are also within the Secretary's rulemaking authority under Sections 205(a) and 1102 of the Social Security Act, as amended (42 U.S.C. 405(a) and 1302). The revisions with respect to title XVI (SSI) cases are made under the Secretary's authority to promulgate rules and regulations necessary for administering the SSI program, under Sections 1102, 1631, and 1633 of the Social Security Act, as amended (42 U.S.C. 1302, 1383 and 1383(b)).

Regulatory Procedures

Executive Order 12291—No significant increase in program costs is anticipated as a result of the disability hearing procedures. In fact, it is expected that as a result of the authorizing legislation and these implementing regulations, there will be some minimal administrative savings since the disability hearing procedure will allow resolution of more appeals at the less costly reconsideration level rather than at the ALJ hearing level and beyond. Therefore, the Secretary has determined that this rule is not a "major rule" under Executive Order 12291, and a regulatory impact analysis not required.

Paperwork Reduction Act—The regulations modify in several respects the reporting/recordkeeping requirements of our existing regulations governing reconsideration cases. We have developed and secured OMB approval of the new forms which will be used in the reconsideration process in the medical cessation cases affected by these final rules. The new forms, the affected regulation sections, and the OMB approval numbers are as follows: Form SSA-789-U4, *Request for Reconsideration—Disability Cessation* (paragraph (b) of § 404.913 and paragraph (d) of § 416.1413 (OMB No. 0960-0349)); form SSA-765, *Response to Notice of Revised Determination* (paragraph (b) of §§ 404.992 and 416.1492 (OMB No. 0960-0347); SSA-773-U4, *Waiver of Right to Appear—Disability Hearing* (paragraph (d) of §§ 404.916 and 416.1416 (OMB No. 960-0352); form SSA-769-U4, *Request for Change in Time/Place of Disability Hearing* (paragraph (c) of §§ 404.914 and 416.1414 (OMB No. 0960-0348)).

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small entities because the rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802, Social Security—Disability Insurance; and 13.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-age, survivors and disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental security income (SSI).

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organizations and functions (Government agencies), Social Security.

Dated: May 23, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: July 2, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

For the reasons discussed above, 20 CFR Parts 404, 416, and 422 are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for Part 404, Subpart J continues to read as follows:

Authority: Secs. 205 and 1102 of the Social Security Act; sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 405 and 1302, unless otherwise noted).

2. In part 404, Subpart J, the Table of Contents is amended by revising the entries under the headings "Reconsideration", "Hearings", "Hearing Procedures", and by revising the center headings "Hearings" and

"Hearing Procedures" to read as follows:

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions.

Sec.

* * * * *

Reconsideration

* * * * *

Hearing Before an Administrative Law Judge

Administrative Law Judge Hearing Procedures

* * * * *

3. In Part 404, Subpart J, § 404.900 paragraphs (a) (2) and (3) are revised to read as follows:

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

Introduction, Definitions, and Initial Determinations

§ 404.900 Introduction.

(a) * * *

(2) *Reconsideration.* If you are dissatisfied with an initial determination, you may ask us to reconsider it.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsideration determination, you may request a hearing before an administrative law judge.

* * * * *

4. In Part 404, Subpart J, § 404.904 is revised to read as follows:

§ 404.904 Notice of the initial determination.

We shall mail a written notice of the initial determination to you at your last known address. The reasons for the initial determination and the effect of the initial determination will be stated in the notice. The notice also informs you of the right to a reconsideration. We will not mail a notice if the beneficiary's entitlement to benefits has ended because of his or her death.

5. In Part 404, Subpart J, § 404.905 is revised to read as follows:

§ 404.905 Effect of an initial determination.

An initial determination is binding unless you request a reconsideration within the stated time period, or we revise the initial determination.

6. In Part 404, Subpart J, § 404.907 is revised to read as follows:

Reconsideration

§ 404.907 Reconsideration—general.

Reconsideration is the first step in the administrative review process that we provide if you are dissatisfied with the initial determination. If you are dissatisfied with our reconsidered determination, you may request a hearing before an administrative law judge.

7. In Part 404, Subpart J, a new § 404.913 is added to read as follows:

§ 404.913 Reconsideration procedures.

(a) *Case review.* With the exception of the type of case described in paragraph (b) of this section, the reconsideration process consists of a case review. Under a case review procedure, we will give you and the other parties to the reconsideration an opportunity to present additional evidence to us. The official who reviews your case will then make a reconsidered determination based on all of this evidence.

(b) *Disability hearing.* If you have been receiving benefits based on disability and you request reconsideration of an initial or revised determination that, based on medical factors, you are not now disabled, we will give you and the other parties to the reconsideration an opportunity for a disability hearing. (See §§ 404.914 through 404.918.)

8. In Part 404, Subpart J, a new § 404.914 is added to read as follows:

§ 404.914 Disability hearing—general.

(a) *Availability.* We will provide you with an opportunity for a disability hearing if:

(1) You have been receiving benefits based on a medical impairment that renders you disabled;

(2) We have made an initial or revised determination based on medical factors that you are not now disabled because your impairment:

(i) Has ceased;

(ii) Did not exist; or

(iii) Is no longer disabling; and

(3) You make a timely request for reconsideration of the initial or revised determination.

(b) *Scope.* The disability hearing will address only the initial or revised determination, based on medical factors, that you are not now disabled. Any other issues which arise in connection with your request for reconsideration will be reviewed in accordance with the reconsideration procedures described in § 404.913(a).

(c) *Time and place.*—(1) *General.* Either the State agency or the Director of the Office of Disability Hearings or

his or her delegate, as appropriate, will set the time and place of your disability hearing. We will send you a notice of the time and place of your disability hearing at least 20 days before the date of the hearing. You may be expected to travel to your disability hearing. At your request, we will reimburse you for your travel expenses if you travel more than 75 miles one-way to the hearing location. Travel advances may be authorized if you request prepayment and show that the requested advance is reasonable and necessary. Additionally, upon request, we will pay travel expenses of your representative or an unsubpoenaed witness if they travel more than 75 miles one-way to the hearing site.

(2) *Change of time or place.* If you are unable to travel or have some other reason why you cannot attend your disability hearing at the scheduled time or place, you should request at the earliest possible date that the time or place of your hearing be changed. We will change the time or place if there is good cause for doing so under the standards in § 404.936 (c) and (d).

(d) *Combined issues.* If a disability hearing is available to you under paragraph (a) of this section, and you file a new application for benefits while your request for reconsideration is still pending, we may combine the issues on both claims for the purpose of the disability hearing and issue a combined initial/reconsidered determination which is binding with respect to the common issues on both claims.

(e) *Definition.* For purposes of the provisions regarding disability hearings (§§ 404.914 through 404.918) "we", "us" or "our" means the Social Security Administration or the State agency.

9. In Part 404, Subpart J, a new § 404.915 is added to read as follows:

§ 404.915 Disability hearing—disability hearing officers.

(a) *General.* Your disability hearing will be conducted by a disability hearing officer who was not involved in making the determination you are appealing. The disability hearing officer will be an experienced disability examiner, regardless of whether he or she is appointed by a State agency or by the Director of the Office of Disability Hearings or his or her delegate, as described in paragraphs (b) and (c) below.

(b) *State agency hearing officers.*—(1) *Appointment of State agency hearing officers.* If a State agency made the initial or revised determination that you are appealing, the disability hearing officer who conducts your disability hearing may be appointed by a State agency. If the disability hearing officer is appointed by a State agency, that individual will be employed by an adjudicatory unit of the State agency other than the adjudicatory unit which made the determination you are appealing.

(2) *"State agency" defined.* For purposes of this Subpart, "State agency" means the adjudicatory component in the State which issues disability determinations.

(c) *Federal hearing officers.* The disability hearing officer who conducts your disability hearing will be appointed by the Director of the Office of Disability Hearings or his or her delegate if:

(1) A component of our office other than a State agency made the determination you are appealing; or

(2) The State agency does not appoint a disability hearing officer to conduct your disability hearing under paragraph (b) of this section.

10. In Part 404, Subpart J, a new § 404.916 is added to read as follows:

§ 404.916 Disability hearing—procedures.

(a) *General.* The disability hearing will enable you to introduce evidence and present your views to a disability hearing officer if you are dissatisfied with an initial or revised initial determination, based on medical factors, that you are not now disabled as described in § 404.914(a)(2).

(b) *Your procedural rights.* We will advise you that you have the following procedural rights in connection with the disability hearing process:

(1) You may request that we assist you in obtaining pertinent evidence for your disability hearing and, if necessary, that we issue a subpoena to compel the production of certain evidence or testimony. We will follow subpoena procedures similar to those described in § 404.950(d) for the administrative law judge hearing process;

(2) You may have a representative at the hearing appointed under Subpart R of this Part, or you may represent yourself;

(3) You or your representative may review the evidence in you case file, either or the date of you hearing or at an earlier time at your request, and present additional evidence;

(4) You may present witnesses and question any witnesses at the hearing;

(5) You may waive your right to appear at the hearing. If you do not appear at the hearing, the disability hearing officer will prepare and issue a written reconsidered determination based on the information in your case file.

(c) *Case preparation.* After you request reconsideration, your case file will be reviewed and prepared for the hearing. This review will be conducted in the component of our office (including a State agency) that made the initial or revised determination, by personnel who were not involved in making the initial or revised determination. Any new evidence you submit in connection with your request for reconsideration will be included in this review. If necessary, further development of the evidence, inlcuding arrrangements for medical examinations, will be undertaken by this component. After the case file is prepared for the hearing, it will be forwarded by this component to the disability hearing officer for a hearing. If necessary, the case file may be sent back to this component at any time prior to the issuance of the reconsidered determination for additional development. Under paragraph (d) of this section, this component has the authority to issue a favorable reconsidered determination at any time in its development process.

(d) *Favorable reconsideration determination without a hearing.* If all the evidence in your case file supports a finding that you are now disabled, either the component that prepares your case for hearing under paragraph (c) or the disability hearing officer will issue a written favorable reconsideration determination, even if a disability hearing has not yet been held.

(e) *Opportunity to submit additional evidence after the hearing.* At your request, the disability hearing officer may allow up to 15 days after your disability hearing for receipt of evidence which is not available at the hearing, if:

(1) The disability hearing officer determines that the evidence has a direct bearing on the outcome of the hearing; and

(2) The evidence could not have been obtained before the hearing.

(f) *Opportunity to review and comment on evidence obtained or developed by us after the hearing.* If, for any reason, additional evidence is obtained or developed by us after your disability hearing, and all evidence taken together can be used to support a reconsidered determination that is unfavorable to you with regard to the medical factors of eligibility, we will notify you, in writing, and give you an opportunity to review and comment on the additional evidence. You will be given 10 days from the date you receive our notice to submit your comments (in writing or, in appropriate cases, by telephone), unless there is good cause for granting you additional time, as

illustrated by the examples in § 404.911(b). Your comments will be considered before a reconsidered determination is issued. If you believe that it is necessary to have further opportunity for a hearing with respect to the additional evidence, a supplementary hearing may be scheduled at your request. Otherwise, we will ask for your written comments on the additional evidence, or, in appropriate cases, for your telephone comments.

§ 404.917 [Redesignated as § 404.919].

11. In Part 404, Subpart J, redesignate existing § 404.917 as § 404.919 and add a new § 404.917 to read as follows:

§ 404.917 Disability hearing—disability hearing officer's reconsidered determination.

(a) *General.* The disability hearing officer who conducts your disability hearing will prepare and will also issue a written reconsidered determination, unless:

(1) The disability hearing officer sends the case back for additional development by the component that prepared the case for the hearing, and that component issues a favorable determination, as permitted by § 404.916(c);

(2) It is determined that you are engaging in substantial gainful activity and that you are therefore not disabled; or

(3) The reconsidered determination prepared by the disability hearing officer is reviewed under § 404.918.

(b) *Content.* The disability hearing officer's reconsidered determination will give the findings of fact and the reasons for the reconsidered determination. The reconsidered determination must be based on evidence offered at the disability hearing or otherwise included in the case file.

(c) *Notice.* We will mail you and the other parties a notice of reconsidered determination in accordance with §404.922.

(d) *Effect.* The disability hearing officer's reconsidered determination, or, if it is changed under § 404.918, the reconsidered determination that is issued by the Director of the Office of Disability Hearings or his or her delegate, is binding in accordance with § 404.921, subject to the exceptions specified in that section.

§§ 409.918, 404.920, and 404.921 [Redesignated as §§ 404.920, 404.921 and 404.922].

12. In Part 404, Subpart J, redesignate existing §§ 404.918, 404.920 and 404.921 as §§ 404.920, 404.921 and 404.922 respectively; and add a new § 404.918 to read as follows:

§ 404.918 Disability hearing—review of the disability hearing officer's reconsidered determination before it is issued.

(a) *General.* The Director of the Office of Disability Hearings or his or her delegate may select a sample of disability hearing officers' reconsidered determinations, before they are issued, and review any such case to determine its correctness on any grounds he or she deems appropriate. The Director or his or her delegate shall review any case within the sample if:

(1) There appears to be an abuse of discretion by the hearing officer;

(2) There is an error of law; or

(3) The action, findings or conclusions of the disability hearing officer are not supported by substantial evidence.

If the review indicates that the reconsidered determination prepared by the disability hearing officer is correct, it will be dated and issued immediately upon completion of the review. If the reconsidered determination prepared by the disability hearing officer is found by the Director or his or her delegate to be deficient, it will be changed as described in paragraph (b) below.

(b) *Methods of correcting deficiencies in the disability hearing officer's reconsidered determination.* If the reconsidered determination prepared by the disability hearing officer is found by the Director or his or her delegate to be deficient, the Director of the Office of Disability Hearings or his or her delegate will take appropriate action to assure that the deficiency is corrected before a reconsidered determination is issued. The action taken by the Director or his or her delegate will take one of two forms:

(1) The Director or his or her delegate may return the case file either to the component responsible for preparing the case for hearing or to the disability hearing officer, for appropriate further action; or

(2) The Director or his or her delegate may issue a written reconsidered determination which corrects the deficiency.

(c) *Further action on your case if it is sent back by the Director or his or her delegate either to the component that prepared your case for hearing or to the disability hearing officer.* If the Director of the Office of Disability Hearings or his or her delegate sends your case back either to the component responsible for preparing the case for hearing or to the disability hearing officer for appropriate further action, as provided in paragraph (b)(1) above, any additional proceedings in your case will be governed by the disability hearing procedures described in § 404.916(f) or if your case is returned to the disability hearing officer and an unfavorable determination is indicated, a supplementary hearing may be scheduled for you before a reconsidered determination is reached in your case.

(d) *Opportunity to comment before the Director or his or her delegate issues a reconsidered determination that is unfavorable to you.* If the Director of the Office of Disability Hearings or his or her delegate proposes to issue a reconsidered determination as described in paragraph (b)(2) above, and that reconsidered determination is unfavorable to you, he or she will send you a copy of the proposed reconsidered determination with an explanation of the reasons for it, and will give you an opportunity to submit written comments before it is issued. At your request, you will also be given an opportunity to inspect the pertinent materials in your case file, including the reconsidered determination prepared by the disability hearing officer, before submitting your comments. You will be given 10 days from the date you receive the Director's notice of proposed action to submit your written comments, unless additional time is necessary to provide access to the pertinent file materials or there is good cause for providing more time, as illustrated by the examples in § 404.911(b). The Director or his or her delegate will consider your comments before taking any further action on your case.

13. In Part 404, Subpart J, newly redesignated § 404.921, is revised to read as follows:

§ 404.921 Effect of a reconsidered determination.

The reconsidered determination is binding unless—

(a) You or any other party to the reconsideration requests a hearing before an administrative law judge within the stated time period and a decision is made;

(b) The expedited appeals process is used; or

(c) The reconsidered determination is revised.

14. In Part 404, Subpart J, the center heading Hearings, and the title of § 404.929 are revised to read as follows:

Hearing Before an Administrative Law Judge

§ 404.929 Hearing before an administrative law judge—general.

15. In Part 404, Subpart J, § 404.930, the title of the section and paragraph (a) are revised to read as follows:

§ 404.930 Availability of a hearing before an administrative law judge.

(a) You or another party may request a hearing before an administrative law judge if we have made—

(1) A reconsidered determination;

(2) A revised determination of an initial determination, unless the revised determination concerns the issue of whether, based on medical factors, you are disabled;

(3) A reconsideration of a revised initial determination concerning the issue of whether, based on medical factors, you are disabled;

(4) A revised reconsidered determination; or

(5) A revised decision based on evidence not included in the record on which the prior decision was based.

* * * * *

16. In Part 404, Subpart J, the title of § 404.932 is revised to read as follows:

§ 404.932 Parties to a hearing before an administrative law judge.

17. In Part 404, Subpart J, the title of § 404.933 is revised to read as follows:

§ 404.933 How to request a hearing before an administrative law judge.

18. In Part 404, Subpart J, the title of § 404.935 is revised to read as follows:

§ 404.935 Submitting evidence prior to a hearing before an administrative law judge.

19. In Part 404, Subpart J, the title of § 404.936 is revised to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

20. In Part 404, Subpart J, the title of § 404.938 is revised to read as follows:

§ 404.938 Notice of a hearing before an administrative law judge.

21. In Part 404, Subpart J, the center heading, Hearing Procedures, and the titles of §§ 404.944, 404.946 and 404.948 are revised to read as follows:

Administrative Law Judge Hearing Procedures

§ 404.944 Administrative law judge hearing procedures—general.

§ 404.946 Issues before an administrative law judge.

§ 404.948 Deciding a case without an oral hearing before an administrative law judge.

22. In Part 404, Subpart J, the title of § 404.950 is revised to read as follows:

§ 404.950 Presenting evidence at a hearing before an administrative law judge.

23. In Part 404, Subpart J, the title of § 404.951 is revised to read as follows:

§ 404.951 When a record of a hearing before an administrative law judge is made.

24. In Part 404, Subpart J, the titles of §§ 404.952, 404.953 and 404.955 are revised to read as follows:

§ 404.952 Consolidated hearing before an administrative law judge.

§ 404.953 The decision of an administrative law judge.

§ 404.955 The effect of an administrative law judge's decision.

25. In Part 404, Subpart J, the title of § 404.956 is revised to read as follows:

§ 404.956 Removal of a hearing from an administrative law judge to the Appeals Council.

26. In Part 404, Subpart J, the title of § 404.957 is revised to read as follows:

§ 404.957 Dismissal of a request for a hearing before an administrative law judge.

27. In Part 404, Subpart J, the title of § 404.958 is revised to read as follows:

§ 404.958 Notice of dismissal of a request for a hearing before an administrative law judge.

28. In Part 404, Subpart J, the title of § 404.959 is revised to read as follows:

§ 404.959 Effect of dismissal of a request for a hearing before an administrative law judge.

29. In Part 404, Subpart J, the title of § 404.960 is revised to read as follows:

§ 404.960 Vacating a dismissal of a request for a hearing before an administrative law judge.

30. In Part 404, Subpart J, § 404.992 is revised to read as follows:

§ 404.992 Notice of revised determination or decision.

(a) When a determination or decision is revised, notice of the revision will be mailed to the parties at their last known address. The notice will state the basis for the revised determination or decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a reconsidered determination that you are disabled, based on medical factors, is reopened for the purpose of being revised, you will be notified, in writing, of the proposed revision and of your right to request that a disability hearing be held before a revised reconsidered determination is issued. If a revised reconsidered determination is issued, you may request a hearing before an administrative law judge.

(c) If an administrative law judge or the Appeals Council proposes to revise a decision, and the revision would be based on evidence not included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action and of your right to request that a hearing be held before any further action is taken. If a revised decision is issued by an administrative law judge, you and any other party may request that it be reviewed by the Appeals Council, or the Appeals Council may review the decision on its own initiative.

(d) If an administrative law judge or the Appeals Council proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action. If a revised decision is issued by an administrative law judge, you and any other party may request that it be reviewed by the Appeals Council, or the Appeals Council may review the decision on its own initiative.

31. In Part 404, Subpart J, § 404.993 is revised to read as follows:

§ 404.993 Effect of revised determination or decision.

A revised determination or decision is binding unless—

(a) You or another party to the revised determination file a written request for reconsideration or a hearing before an administrative law judge, as appropriate;

(b) You or another party to the revised decision file, as appropriate, a request for review by the Appeals Council or a hearing before an administrative law judge;

(c) The Appeals Council reviews the revised decision; or

(d) The revised determination or decision is further revised.

Subpart P—Determining Disability and Blindness

32. The authority citation for Part 404, Subpart P continues to read as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225 and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, 1081 and 1082 as amended, 70 Stat. 815 and 817, as amended, 49 Stat. 647, as amended (42 U.S.C. 402, 405, 416, 421, 422, 423, 425 and 1302); sec. 505 (a) and (c) of Pub. L. 96-265, 94 Stat. 473; sec. 4 of Pub. L. 98-460, 98 Stat. 1800, unless otherwise noted.

33. In Part 404, Subpart P § 404.1546 is revised to read as follows

§ 404.1546 Responsibility for assessing and determining residual functional capacity.

The State agency staff physicians or other physicians designated by the Secretary are responsible for assuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency staff physician must assess residual functional capacity where it is required. This assessment is based on all of the medical evidence we have, including any other assessments that may have been provided by treating or examining physicians, consultative physicians, or any other physician designated by the Secretary. (See § 404.1545.) For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 404.918, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the administrative law judge hearing level, this responsibility rests with the administrative law judge. For cases at the Appeals Council level, this responsibility rests with the Appeals Council.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

34. In Part 416, Subpart N, the Table of Contents entries under the center headings "Reconsideration", "Hearings", and "Hearing Procedures", and the center headings "Hearings" and "Hearing Procedures" are revised to read as follows:

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

Sec.

* * * * *

Reconsideration

* * * * *

Hearing Before an Administrative Law Judge

Administrative Law Judge Hearing Procedures

* * * * *

Subpart I—Determining Disability and Blindness

35. The authority citation for Part 416, Subpart I continues to read as follows:

Authority: Secs. 1102, 1614, and 1631 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 88 Stat. 52, 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383; sec. 4 of Pub. L. 98-460, 98 Stat. 1800, unless otherwise noted.

36. In Part 416, Subpart I, § 416.946 is revised to read as follows:

§ 416.946 Responsibility for assessing and determining residual functional capacity.

The State agency staff physicians or any other physicians designated by the Secretary are responsible for assuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency staff physician must assess residual functional capacity where it is required. This assessment is based on all of the medical evidence we have, including any other assessments that may have been provided by treating or examining physicians, consultative physicians, or any other physician designated by the Secretary. (See § 416.945.) For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer, or, if the disability hearing officer's reconsidered determination is changed under § 416.1418, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the administrative law judge hearing level, this responsibility rests with the administrative law judge. For cases at the Appeals Council level, this responsibility rests with the Appeals Council.

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

37. The authority citation for Part 416, Subpart N continues to read as follows:

Authority: Secs. 1102, and 1631, and 1633 of the Social Security Act, 49 Stat. 647, 86 Stat. 1475 and 1478 (42 U.S.C. 1302, 1383 and 1383b).

38. In Part 416, Subpart N, § 416.1400, paragraphs (a)(2) and (3) are revised to read as follows:

Introduction, Definitions and Initial Determinations

§ 416.1400 Introduction.

(a) * * *

(2) *Reconsideration.* If you are dissatisfied with an initial determination, you may ask us to reconsider it.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsideration determination, you may request a hearing before an administrative law judge.

* * * * *

39. In Part 416, Subpart N, § 416.1404, paragraphs (b)(3) and (c) are revised to read as follows:

§ 416.1404 Notice of the initial determination.

* * * * *

(b) The written notice that we send will tell you—

* * * * *

(3) What rights you have to a reconsideration of the determination. (c) If our initial determination is that we must suspend, reduce or terminate your benefits, the notice will also tell you that you have a right to a reconsideration before the determination takes effect (see § 416.1336).

40. In Part 416, Subpart N, § 416.1405 is revised to read as follows:

§ 416.1405 Effect of an initial determination.

An initial determination is binding unless you request a reconsideration within the stated time period, or we revise the initial determination.

41. In Part 416, Subpart N, § 416.1407 is revised to read as follows:

Reconsideration

§ 416.1407 Reconsideration—general.

Reconsideration is the first step in the administrative review process that we provide if you are dissatisfied with the initial determination. If you are dissatisfied with our reconsideration determination, you may request a hearing before an administrative law judge.

42. In Part 416, Subpart N, § 416.1413 is amended by adding a new paragraph (d), to read as follows:

§ 416.1413 Reconsideration procedures.

* * * * *

(d) *Disability hearing.* If you have been receiving supplemental security income benefits because you are blind or disabled and you request reconsideration of an initial or revised determination that, based on medical factors, you are not now blind or disabled, we will give you and the other parties to the reconsideration an opportunity for a disability hearing. (See §§ 416.1414 through 416.1418.)

§ 416.1414 [Redesignated as § 416.1413a].

43. In Part 416, Subpart N, § 416.1414 is redesignated as a new § 416.1413a.

§ 416.1415 [Redesignated as § 416.1413b].

44. In Part 416, Subpart N, § 416.1415 is redesignated as a new § 416.1413b, and is revised to read as follows:

§ 416.1413b Reconsideration procedures for post-eligiblity claims.

If you are eligible for supplemental security income benefits and we notify you that we are going to suspend, reduce or terminate your benefits, you can appeal our determination within 60 days of the date you receive our notice. The 60-day period may be extended if you have good cause for an extension of time under the conditions stated in § 416.1411(b). If you appeal a suspension, reduction, or termination of benefits, the method of reconsideration we will use depends on the issue in your case. If the issue in your case is that you are no longer blind or disabled for medical reasons, you will receive an opportunity for a disability hearing. If any other issue is involved, you have the choice of a case review, informal conference or formal conference.

§ 416.1416 [Redesignated as § 416.1413c].

45. In Part 416, Subpart N, § 416.1416 is redesignated as a new § 416.1413c.

46. In Part 416, Subpart N, a new § 416.1414 is added to read as follows:

§ 416.1414 Disability hearing—general.

(a) *Availability.* We will provide you with an opportunity for a disability hearing if:

(1) You have been receiving supplemental security income benefits based on a medical impairment that renders you blind or disabled; (2) We have made an initial or revised determination based on medical factors that you are not blind or disabled because your impairment:

(i) Has ceased;

(ii) Did not exist; or

(iii) Is no longer disabling; and

(3) You make a timely request for reconsideration of the initial or revised determination.

(b) *Scope.* The disability hearing will address only the initial or revised determination, based on medical factors, that you are not now blind or disabled. Any other issues you raise in connection with your request for reconsideration will be reviewed in accordance with the reconsideration procedures described in § 416.1413 (a) through (c).

(c) *Time and place.*—(1) *General.* Either the State agency or the Director of the Office of Disability Hearings or his or her delegate, as appropriate, will set the time and place of your disability hearing. We will send you a notice of the time and place of your disability hearing at least 20 days before the date of the hearing. You may be expected to travel to your disability hearing. At your request, we will reimburse you for your travel expenses if you travel more than 75 miles one-way to the hearing location. Travel advances may be authorized if you request prepayment and show that the requested advance is reasonable and necessary. Additionally, upon request, we will pay travel expenses of your representative or an unsubpoenaed witness if they travel more than 75 miles one-way to the hearing site.

(2) *Change of time or place.* If you are unable to travel or have some other reason why you cannot attend your disability hearing at the scheduled time or place, you should request at the earliest possible date that the time or place of your hearing be changed. We will change the time or place if there is good cause for doing so under the standards in § 416.1436 (c) and (d).

(d) *Combined issues.* If a disability hearing is available to you under paragraph (a) of this section, and you file a new application for benefits while your request for reconsideration is still pending, we may combine the issues on both claims for the purpose of the disability hearing and issue a combined initial/reconsidered determination which is binding with respect to the common issues on both claims.

(e) *Definition.* For purposes of the provisions regarding disability hearings (§§ 416.1414 through 416.1418) "we", "us", or "our" means the Social Security Administration or the State agency.

47. In Part 416, Subpart N, a new § 416.1415 is added to read as follows:

§ 416.1415 Disability hearing—disability hearing officers.

(a) *General.* Your disability hearing will be conducted by a disability hearing officer who was not involved in making the determination you are appealing. The disability hearing officer will be an experienced disability examiner, regardless of whether he or she is appointed by a State agency or by the Director of the Office of Disability Hearings or his or her delegate, as described in paragraphs (b) and (c) below.

(b) *State agency hearing officers.*—(1) *Appointment of State agency hearing officers.* If a State agency made the initial or revised determination that you are appealing, the disability hearing officer who conducts your disability hearing may be appointed by a State

agency. If the disability hearing officer is appointed by a State agency, that individual will be employed by an adjudicatory unit of the State agency other than the adjudicatory unit which made the determination you are appealing.

(2) *"State agency" defined.* For purposes of this Subpart, "State agency" means the adjudicatory component in the State which issues disability determinations.

(c) *Federal hearing officers.* The disability hearing officer who conducts your disability hearing will be appointed by the Director of the Office of Disability Hearings or his or her delegate if:

(1) A component of our office other than a State agency made the determination you are appealing; or

(2) The State agency does not appoint a disability hearing officer to conduct your disability hearing under paragraph (b) of this section.

48. In Part 416, Subpart N, a new § 416.1416 is added to read as follows:

§ 416.1416 Disability hearing—procedures.

(a) *General.* The disability hearing will enable you to introduce evidence and present your views to a disability hearing officer if you are dissatisfied with an initial or revised determination, based on medical factors, that you are not now blind or disabled, as described in § 416.1414(a)(2).

(b) *Your procedural rights.* We will advise you that you have the following procedural rights in connection with the disability hearing process:

(1) You may request that we assist you in obtaining pertinent evidence for your disability hearing and, if necessary, that we issue a subpoena to compel the production of certain evidence or testimony. We will follow subpoena procedures similar to those described in § 416.1450(d) for the administrative law judge hearing process;

(2) You may have a representative at the hearing appointed under Subpart O of this Part, or you may represent yourself;

(3) You or your representative may review the evidence in your case file, either on the date of your hearing or at an earlier time at your request, and present additional evidence;

(4) You may present witnesses and question any witnesses at the hearing;

(5) You may waive your right to appear at the hearing. If you do not appear at the hearing, the disability hearing officer will prepare and issue a written reconsidered determination based on the information in your case file.

(c) *Case preparation.* After you request reconsideration, your case file will be reviewed and prepared for the hearing. This review will be conducted in the component of our office (including a State agency) that made the initial or revised determination, by personnel who were not involved in making the initial or revised determination. Any new evidence you submit in connection with your request for reconsideration will be included in this review. If necessary, further development of evidence, including arrangements for medical examinations, will be undertaken by this component. After the case file is prepared for the hearing, it will be forwarded by this component to the disability hearing officer for a hearing. If necessary, the case file may be sent back to this component at any time prior to the issuance of the reconsidered determination for additional development. Under paragraph (d) of this section, this component has the authority to issue a favorable reconsidered determination at any time in its development process.

(d) *Favorable reconsidered determination without a hearing.* If the evidence in your case file supports a finding that you are now blind or disabled, either the component that prepares your case for hearing under paragraph (c) or the disability hearing officer will issue a written favorable reconsidered determination, even if a disability hearing has not yet been held.

(e) *Opportunity to submit additional evidence after the hearing.* At your request, the disability hearing officer may allow up to 15 days after your disability hearing for receipt of evidence which is not available at the hearing, if:

(1) The disability hearing officer determines that the evidence has a direct bearing on the outcome of the hearing; and

(2) The evidence could not have been obtained before the hearing.

(f) *Opportunity to review and comment on evidence obtained or developed by us after the hearing.* If, for any reason, additional evidence is obtained or developed by us after your disability hearing, and all evidence taken together can be used to support a reconsidered determination that is unfavorable to you with regard to the medical factors of eligibility, we will notify you, in writing, and give you an opportunity to review and comment on the additional evidence. You will be given 10 days from the date you receive our notice to submit your comments (in writing or, in appropriate cases, by telephone), unless there is good cause for granting you additional time, as illustrated by the examples in § 416.1411(b). Your comments will be considered before a reconsidered determination is issued. If you believe that it is necessary to have further opportunity for a hearing with respect to the additional evidence, a supplementary hearing may be scheduled at your request. Otherwise, we will ask for your written comments on the additional evidence, or, in appropriate cases, for your telephone comments.

§ 416.1417 [Redesignated as § 416.1419].

49. In Part 416, Subpart N, redesignate § 416.1417 as a new § 416.1419 and add a new § 416.1417 to read as follows:

§ 416.1417 Disability hearing—disability hearing officer's reconsidered determination.

(a) *General.* The disability hearing officer who conducts your disability hearing will prepare and will issue a written reconsidered determination, unless:

(1) The disability hearing officer sends the case back for additional development by the component that prepared the case for the hearing, and that component issues a favorable determination, as permitted by § 416.1416(c);

(2) It is determined that you are engaging in substantial gainful activity and that you are therefore not disabled; or

(3) The reconsidered determination prepared by the disability hearing officer is reviewed under § 416.1418.

(b) *Content.* The disability hearing officer's reconsidered determination will give the findings of fact and the reasons for the reconsidered determination. The reconsidered determination must be based on evidence offered at the disability hearing or otherwise included in your case file.

(c) *Notice.* We will mail you and the other parties a notice of reconsidered determination in accordance with § 416.1422.

(d) *Effect.* The disability hearing officer's reconsidered determination, or, if it is changed under § 416.1418, the reconsidered determination that is issued by the Director of the Office of Disability Hearings or his or her delegate, is binding in accordance with § 416.1421, subject to the exceptions specified in that section.

§§ 416.1418, 416.1420 and 416.1421 [Redesignated as §§ 416.1420, 416.1421 and 416.1422].

50. In Part 416, Subpart N, redesignate existing §§ 416.1418, 416.1420 and 416.1421 as §§ 416.1420, 416.1421 and

416.1422 respectively, and add a new § 416.1418 to read as follows:

§ 416.1418 Disability hearing—review of the disability hearing officer's reconsidered determination before it is issued.

(a) *General.* The Director of the Office of Disability Hearings or his or her delegate may select a sample of disability hearing officers' reconsidered determinations, before they are issued, and review any such case to determine its correctness on any grounds he or she deems appropriate. The Director or his or her delegate shall review any case within the sample if:

(1) There appears to be an abuse of discretion by the hearing officer;

(2) There is an error of law; or

(3) The action, findings or conclusions of the disability hearing officer are not supported by substantial evidence.

If the review indicates that the reconsidered determination prepared by the disability hearing officer is correct, it will be dated and issued immediately upon completion of the review. If the reconsidered determination prepared by the disability hearing officer is found by the Director or his or her delegate to be deficient, it will be changed as described in paragraph (b) below.

(b) *Methods or correcting deficiencies in the disability hearing officer's reconsidered determination.* If the reconsidered determination prepared by the disability hearing officer is found by the Director or his or her delegate to be deficient, the Director of the Office of Disability Hearings or his or her delegate will take appropriate action to assure that the deficiency is corrected before a reconsidered determination is issued. The action taken by the Director or his or her delegate will take one of two forms:

(1) The Director or his or her delegate may return the case file either to the component responsible for preparing the case for hearing or to the disability hearing officer, for appropriate further action; or

(2) The Director or his or her delegate may issue a written reconsidered determination which corrects the deficiency.

(c) *Further action on your case if it is sent back by the Director or his or her delegate either to the component that prepared your case for hearing or to the disability hearing officer.* If the Director of the Office of Disability Hearings or his or her delegate sends your case back either to the component responsible for preparing the case for hearing or to the disability hearing officer for appropriate further action, as provided in paragraph (b)(1) above, any additional proceedings in your case will be governed by the disability hearing procedures described in § 416.1416(f) or if your case is returned to the disability hearing officer and an unfavorable determination is indicated, a supplementary hearing may be scheduled for you before a reconsidered determination is reached in your case.

(d) *Opportunity to comment before the Director or his or her delegate issues a reconsidered determination that is unfavorable to you.* If the Director of the Office of Disability Hearings or his or her delegate proposes to issue a reconsidered determination as described in paragraph (b)(2) above, and that reconsidered determination is unfavorable to you, her or she will send you a copy of the proposed reconsidered determination with an explanation of the reasons for it, and will give you an opportunity to submit written comments before it is issued. At your request, you will also be given an opportunity to inspect the pertinent materials in your case file, including the reconsidered determination prepared by the disability hearing officer, before submitting your comments. You will be given 10 days from the date you receive the Director's notice of proposed action to submit your written comments, unless additional time is necessary to provide access to the pertinent file materials or there is good cause for providing more time, as illustrated by the examples in § 416.1411(b). The Director or his or her delegate will consider your comments before taking any further action on your case.

51. In Part 416, Subpart N, newly redesignated § 416.1421 is revised to read as follows:

§ 416.1421 Effect of a reconsidered determination.

The reconsidered determination is binding unless—

(a) You or any other party to the reconsideration requests a hearing before an administrative law judge within the stated time period and a decision is made;

(b) The expedited appeals process is used; or

(c) The reconsidered determination is revised.

52. In Part 416, Subpart N, the center heading "Hearings", and the title of § 416.1429 are revised to read as follows:

Hearing Before an Administrative Law Judge

§ 416.1429 Hearing before an administrative law judge—general.

53. In Part 416, Subpart N, § 416.1430, the title of the section and paragraph (a) are revised to read as follows:

§ 416.1430 Availability of a hearing before an administrative law judge.

(a) You or another party may request a hearing before an administrative law judge if we have made—

(1) A reconsidered determination;

(2) A reconsideration of a revised determination of an initial or reconsidered determination that involves a suspension, reduction or termination of benefits;

(3) A revised initial determination or revised reconsidered determination that does not involve a suspension, reduction or termination of benfits; or

(4) A revised decision based on evidence not included in the record on which prior decision was based.

* * * * *

54. In Part 416, Subpart N, the title of § 416.1432 is revised to read as follows:

§ 416.1432 Parties to a hearing before an administrative law judge.

55. In Part 416, Subpart N, the title of § 416.1433 is revised to read as follows:

§ 416.1433 How to request a hearing before an administrative law judge.

56. In Part 416, Subpart N, the title of § 416.1435 is revised to read as follows:

§ 416.1435 Submitting evidence prior to a hearing before an administrative law judge.

57. In Part 416, Subpart N, the title of § 416.1436 is revised to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

58. In Part 416, Subpart N, the title of § 416.1438 is revised to read as follows:

§ 416.1438 Notice of a hearing before an administrative law judge.

59. In Part 416, Subpart N, the center heading, "Hearing Procedures", and the titles of §§ 416.1444, 416.1446 and 416.1448 are revised to read as follows:

Administrative Law Judge Hearings Procedures

§ 416.1444 Administrative law judge hearing procedures—general.

§ 416.1446 Issues before an administrative law judge.

§ 416.1448 Deciding a case without an oral hearing before an administrative law judge.

60. In Part 416, Subpart N, the title of § 416.1450 is revised to read as follows:

§ 416.1450 Presenting evidence at a hearing before an administrative law judge.

61. In Part 416 Subpart N, the title of § 416.1451 is revised to read as follows:

§ 416.1451 When a record of a hearing before an administrative law judge is made.

62. In Part 416, Subpart N, the titles of §§ 416.1452, 416.1453, and 416.1455 are revised to read as follows:

§ 416.1452 Consolidated hearings before an administrative law judge.

§ 416.1453 The decision of an administrative law judge.

§ 416.1455 The effect of an administrative law judge's decision.

63. In Part 416, Subpart N, the title of § 416.1456 is revised to read as follows:

§ 416.1456 Removal of a hearing request from an administrative law judge to the Appeals Council.

64. In Part 416, Subpart N, the title of § 416.1457 is revised to read as follows:

§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.

65. In Part 416, Subpart N, the title of § 416.1458 is revised to read as follows:

§ 416.1458 Notice of dismissal of a request for a hearing before an administrative law judge.

66. In Part 416, Subpart N, the title of § 416.1459 is revised to read as follows:

§ 416.1459 Effect of dismissal of a request for a hearing before an administrative law judge.

67. In Part 416, Subpart N, the title of § 416.1460 is revised to read as follows:

§ 416.1460 Vacating a dismissal of a request for a hearing before an administrative law judge.

68. In Part 416, Subpart N, § 416.1492 is amended by revising paragraphs (b) through (e), by redesignating paragraphs (d) through (f) as (e) through (g) and adding a new paragraph (d) to read as follows:

§ 416.1492 Notice of revised determination or decision.

* * * * *

(b) If a determination is revised and the revised determination requires that your benefits be suspended, reduced, or terminated, the notice will inform you of your right to continued payment (see § 416.1336 and the exceptions set out in § 416.1337) and of your right of reconsideration.

(c) If a determination is revised and the revised determination does not require that your benefits be suspended, reduced, or terminated, the notice will inform you of your right to a hearing before an administrative law judge.

(d) If a reconsidered determination that you are blind or disabled, based on medical factors, is reopened for the purpose of being revised, you will be notified, in writing, of the proposed revision and of your right to request that a disability hearing be held before a revised reconsidered determination is issued. If a revised reconsidered determination is issued, you may request a hearing before an administrative law judge.

(e) If an administrative law judge or the Appeals Council proposes to revise a decision, and the revision would be based on evidence not included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action and of your right to request that a hearing be held before any further action is taken. If a revised decision is issued by an administrative law judge, you and any other party may request that it be reviewed by the Appeals Council, or the Appeals Council may review the decision on its own initiative.

(f) If an administrative law judge or the Appeals Council proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action. If a revised decision is issued by an administrative law judge, you and any other party may request that it be reviewed by the Appeals Council, or the Appeals Council may review the decision on its own initiative.

PART 422—ORGANIZATION AND PROCEDURES

Subpart C—Procedures of the Bureau of Hearings and Appeals

69. The authority citation for Part 422, Subpart C continues to read as follows:

Authority: Secs. 205, 221, 1102, 1869, and 1871, 53 Stat. 1368, as amended, 68 Stat. 1081, as amended, 79 Stat. 330, 331; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18,631; 42 U.S.C. 405, 421, 1302, 1395ff, and 1395hh. Sec. 422.203(a) is also issued under sec. 413(b) of title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 794; 30 U.S.C. 923(b).

70. In 20 CFR Part 422, § 422.140 is revised to read as follows:

§ 422.140 Reconsideration of initial determination.

Any part who is dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-sum death payment, a period of disability, a revision of an earnings record, with respect to any other right under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, or the amount of hospital insurance benefits, may request that the Social Security Administration reconsider such determination. The information in § 404.1503 of this chapter as to the respective roles of State agencies and the Social Security Administration in the making of disability determinations is also generally applicable to the reconsideration of initial determinations involving disability. However, in cases in which a disability hearing as described in §§ 404.914 through 404.918 and 416.1414 through 416.1418 is available, the reconsidered determination may be issued by a disability hearing officer or by the Director of the Office of Disability Hearings or his or her delegate. After such initial determination has been reconsidered, the Social Security Administration will mail to each of the parties written notice and inform him or her of his right to a hearing before an administrative law judge (see § 422.201). Regulations relating to the details of reconsideration of initial determinations with respect to rights under title II of the Act or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits may be found in Part 404, Subpart J of this chapter.

71. In 20 CFR Part 422, Subpart C, § 422.203, paragraphs (a)(1) and (b)(2) are revised to read as follows:

§ 422.203 Hearings.

(a) *Right to request a hearing.* (1) After a reconsidered or a revised determination (i) of a claim for benefits or any other right under title II of the Social Security Act; or (ii) of eligibility or amount of benefits or any other matter under title XVI of the Act, except where an initial or reconsidered determination involving an adverse action is revised, after such revised determination has been reconsidered; or (iii) as to entitlement under Part A or Part B of title XVIII of the Act, or (where the amount in controversy is $100 or more) as to the amount of benefits under Part A of such title XVIII or of health services to be provided by a Health Maintenance Organization without additional costs, any party to such a determination may, pursuant to section 205, 221, 1631, 1869, or 1876 of the Act, as applicable, file a written request for a hearing on the determination. After a reconsidered determination of a claim for benefits under Part B of title IV (Black Lung benefits) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 921–925), a party to the

determination may file a written request for a hearing on the determination.

* * * * *

(b) *Request for hearing.* * * *

(2) Unless for good cause shown an extension of time has been granted, a request for hearing must be filed within 60 days after the receipt of the notice of the reconsidered or revised determination, or after an initial determination described in 42 CFR 405.1502(b)(2), (c), (d)(2), and (e) (see §§ 405.933, 410.631, and 416.1433 of this chapter and 42 CFR 405.722, 405.1530, 405.1531, and 405.2060.)

* * * * *

[FR Doc. 86-31 Filed 1-2-86; 8:45 am]
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Friday
January 3, 1986

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks; Proposed Rulemaking

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. S-020]

Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise certain recordkeeping requirements to reduce the paperwork burdens imposed on employers. This proposed rule will minimize existing recordkeeping requirements by allowing the employer to *certify* that regulatory requirements have been met instead of preparing and maintaining extensive and burdensome records of information. In addition, OSHA also proposes to revoke two recordkeeping requirements. OSHA believes that this action will reduce the paperwork burden on employers as intended by the Paperwork Reduction Act of 1980, without reducing the protection of employee safety or health.

DATES: Written comments, objections and requests for a hearing must be postmarked by March 4, 1986.

ADDRESS: All written submissions, in quadruplicate, should be sent to the Docket Office, Docket S-020, Room N3670, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Ave., NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) was enacted to reduce paperwork and to enhance the economy and efficiency of the government and the private sector by improving Federal information policymaking and management. To accomplish this objective, the Act set a goal to reduce the time burden imposed on individuals, businesses, and State and local governments to record and report information required by the Federal Government. The Act charges the Office of Management and Budget (OMB) with responsibility for implementing the provisions of this Act. OMB has published implementing regulations at 5 CFR Part 1320 and has issued directives for Federal agencies to follow in meeting the objectives of the Paperwork Reduction Act.

In addition, section 8(d) of the Occupational Safety and Health Act (the Act) states that "any information obtained by the Secretary . . . under this Act shall be obtained with a minimum burden upon employers. . . ."

In an effort to meet these statutory goals, OSHA has conducted a comprehensive review of safety standards to identify all recordkeeping requirements. OSHA then analyzed each requirement to determine which recordkeeping requirements contributed directly to employee safety and health, and which did not.

As a result of this careful review and analysis, OSHA identified 22 provisions in the standards found in 29 CFR Parts 1910, 1915, and 1926 that unnecessarily burdened employers with requirements that they prepare and maintain records of tests, inspections, and maintenance checks of equipment and materials.

OSHA believes that it is the actual conduct of the test, inspection, or maintenance check, not the recordkeeping requirement, that contributes directly to employee safety and health by revealing information on which the employer then acts to bring about a safe workplace. The purpose of imposing a test, inspection, or maintenance requirement is to prevent the use of unsafe equipment or materials. Maintaining extensive records which describe the results or findings of a test or inspection does not make a workplace safe. Therefore, OSHA proposes that the pertinent regulatory provisions be revised to eliminate recordkeeping requirements and to provide that employers certify that they conducted the requisite tests or inspections and took the actions prescribed by the applicable standards—to remove, repair or replace defective equipment and/or materials.

II. Supporting Information

Many of the recordkeeping requirements currently found in OSHA standards became part of the standards during the first two years of OSHA's existence. It was during that time that OSHA was authorized by section 6(a) of the Occupational Safety and Health Act to adopt national consensus standards and existing Federal standards without undertaking rulemaking proceedings. This enabled OSHA to fulfill at once its responsibility to protect the Nation's workers. However, it also meant that OSHA adopted the voluntary consensus standards word for word, automatically including any recordkeeping requirements they contained, regardless of the real need for recordkeeping. It was in this manner than many of OSHA's recordkeeping requirements took effect.

Many other recordkeeping requirements were promulgated because OSHA suspected that employers might be lax in their compliance efforts unless they were required to maintain written records. OSHA's experience over the past decade indicates that requiring written records of tests, inspections, and maintenance checks does not assure compliance, but it does burden employers.

III. Agency Action

OSHA proposes to eliminate unnecessary paperwork burdens by allowing the employers to *certify* in writing upon request that the regulatory requirements have been met, rather than requiring them to prepare and maintain detailed records of test results or findings of the testing and inspection requirements. These certifications which attest to compliance with regulatory requirements will be consistent with the definition contained in 5 CFR 1320.7(k)(1).

It is estimated that through this rulemaking action, OSHA will reduce its paperwork burden by 8.5 million hours and save employers approximately $20 million annually.

OSHA is not proposing to revise a number of other provisions containing recordkeeping requirements since the recordkeeping requirements of those provisions are designed to provide the employer with warning of equipment or machinery failures or evidence of deterioration of the equipment or machinery by comparing results of past tests or inspections with current tests or inspections. However, OSHA requests information on whether or not we have failed to identify any burdensome recordkeeping requirements that could be eliminated or changed to permit certification.

OSHA had determined that this proposed paperwork burden reduction will not have any deleterious affect on employee safety or health *since the requirements to perform tests, inspections, and maintenance checks will not be changed.* Only the method of demonstrating compliance would be changed. This point cannot be overemphasized. The written certification is a statement signed and dated by the employer which verifies or attests that the employer has fulfilled

the requirements as prescribed in the particular standard for which the certification is written. OSHA believes that preparing a written certification upon request provides evidence of compliance which is equivalent to preparing and maintaining records to be presented to OSHA upon request.

This certification applies *only* to the provisions of the OSHA regulations specifically set forth in this proposal. Again, it is emphasized that OSHA is not proposing to change any of the requirements for testing, inspection or maintenance checks. Only the recordkeeping requirements associated with these provisions would be changed by this rulemaking.

OSHA presented the proposed changes in the construction standards (Part 1926) to the members of the Construction Safety Advisory Committee at their meeting on May 30, 1984, and requested their comments and recommendations. A transcript of this meeting can be found at Exhibit 2.

In addition to proposing these changes from recordkeeping to certification, OSHA proposes to revoke two recordkeeping provisions. The reasons for revocation are discussed here.

The first recordkeeping requirement is found in paragraph (g)(1)(i)(g) of Section 1910.106. This paragraph requires that service station employers maintain and reconcile accurate inventory records on all Class I liquid storage tanks to determine if leakage from the tanks or piping is occuring. This requirement is designed to provide public protection and to protect the environment—areas which are outside the jurisdiction of the OSHA Act. In addition, OSHA believes that such requirements are best imposed by local and state authorities and need not be mandated at the Federal level.

The second recordkeeping requirement is found in paragraph (a)(1) of § 1910.440. This paragraph requires employers to record and report occupational injuries and illnesses in accordance with the requirements of 29 CFR Part 1904. Since employers are already required to fulfill this requirement under the terms of Part 1904, it is duplicative to present the requirement again in Section 1910.440. This revocation will not reduce employers' paperwork burdens because the recordkeeping in question is still imposed by Part 1904. However, it is included in this proposal so that the redundancy can be eliminated.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Assessment

The Department has determined that this is not a major rule under Executive Order No. 12291. The proposed amendments would simplify the recordkeeping requirements for employers. For this reason, the Department believes that any economic impact will be positive; i.e., costs will be lower and employee safety will not be reduced. It is unlikely that the economic impact will be significant in any case. For the same reasons, the Department also certifies, under the Regulatory Flexibility Act, that these amendments would not have a substantial economic impact on a significant number of small entities. The proposed amendments are not subject to the Paperwork Reduction Act since they would be certifications, and certification activity is not covered by the Paperwork Reduction Act.

V. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. These comments must be postmarked by February 3, 1986 and submited in quadruplicate to the Docket Officer, Docket S-020, Room N3670, U.S. Department of Labor, Washington, DC 20210. Written submissions must clearly identify the specific provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the Act, interested persons may file objections to the proposal and request an informal hearing with respect thereto. The objections and hearing requests should be submitted to the address given above and should be filed in accordance with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked on or before March 4, 1986;
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompained by a detailed summary of the evidence proposed to be adduced at the requested hearing.

VI. State Plan Standards

The 25 States with their own OSHA-approved occupational safety and health plan must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States are: Alaska, Arizona, California, Connecticut *, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York*, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

VII. Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 6(b), 8(c), 8(d) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), Sec. 41 of the Longshoremen's and Harbor Workers Compensation Act, (33 U.S.C. 941), Sec. 107 of the Construction Safety Act (40 U.S.C. 333), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1911, OSHA proposes to amend 29 CFR Parts 1910, 1915, and 1926 as set forth below.

Signed at Washington, D.C. this 19th day of December, 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

List of Subjects in 29 CFR Parts 1910, 1915, and 1926

Occupational safety and health, Safety, Recordkeeping, Certification.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. In § 1910.68, paragraph (e)(3) would be revised to read as follows:

§ 1910.68 Manlifts.

* * * * *

(e) * * *

(3) *Inspection certification.* The employer shall certify (in writing) upon request of OSHA that the inspection and other requirements of paragraphs (e)(1) and (e)(2) of this section have been performed.

2. In § 1910.106, remove and reserve paragraph (g)(1)(i)(g).

§ 1910.106 Flammable and combustible liquids.

* * * * *

(g) * * *

* Plan covers only State and local government employees.

(1) * * *
(i) * * *
(g) * * * [Reserved]
* * * * *

3. In § 1910.157, paragraph (f)(16) would be revised to read as follows:

§ 1910.157 Portable fire extinguishers

* * * * *
(f) * * *
(16) The employer shall certify (in writing) upon request of OSHA that the required hydrostatic testing of fire extinguishers has been performed at the time intervals shown in Table L-1 and at the pressures specified in paragraph (f) of this section.
* * * * *

4. In § 1910.179, paragraph (j)(2)(v) would be added and paragraphs (j)(2)(iii), (j)(2)(iv), (m)(1) introductory text and (m)(2) would be revised to read as follows:

§ 1910.179 Overhead and gantry cranes.

* * * * *
(j) * * *
(2) * * *
(iii) Hooks with deformation or cracks. Visual inspection daily; monthly inspection. For hooks with cracks or having more than 15 percent in excess of normal throat opening or more than 10° twist from the plane of the unbent hook refer to paragraph (j)(1)(3)(iii)(*a*) of this section.
(iv) Hoist chains, including end connections, for excessive wear, twist, distorted links interfering with proper function, or stretch beyond manufacturer's recommendations. Visual inspection daily; monthly inspection.
(v) The employer shall certify (in writing) upon request of OSHA that the inspection requirements of paragraphs (j)(2)(iii) and (iv) of this section have been performed.
* * * * *
(m) * * *
(1) *Running ropes.* A thorough inspection of all ropes shall be made at least once a month. The employer shall certify (in writing) upon request of OSHA that the monthly rope inspections have been performed. Any deterioration, resulting in appreciable loss of original strength, such as described below, shall be carefully observed and determination made as to whether further use of the rope would constitute a safety hazard:
* * * * *
(2) *Other ropes.* All rope which has been idle for a period of a month or more due to shutdown or storage of a crane on which it is installed shall be given a thorough inspection before it is placed in service. This inspection shall be for all types of deterioration and shall be performed by an appointed person whose approval shall be required for further use of the rope. The employer shall certify (in writing) upon request of OSHA that the ropes have been inspected as required in this paragraph.
* * * * *

5. In § 1910.180, paragraphs (d)(6), (g)(1) introductory text, and (g)(2)(ii) would be revised to read as follows:

§ 1910.180 Crawler locomotive and truck cranes.

* * * * *
(d) * * *
(6) *Inspection certification.* The employer shall certify (in writing) upon request of OSHA that a monthly inspection of critical items in use such as brakes, crane hooks, and ropes has been performed.
* * * * *
(g) * * *
(1) *Running ropes.* A thorough inspection of all ropes in use shall be made at least once a month. All inspections shall be performed by an appointed or authorized person. The employer shall certify (in writing) upon request of OSHA that a monthly inspection of all ropes in use has been performed. Any deterioration, resulting in appreciable loss of original strength, such as described below, shall be carefully observed and determination made as to whether further use of the rope would constitute a safety hazard:
* * * * *
(2) * * *
(ii) All rope which has been idle for a period of a month or more due to shutdown or storage of a crane on which it is installed shall be given a thorough inspection before it is placed in service. This inspection shall be for all types of deterioration and shall be performed by an appointed or authorized person whose approval shall be required for further use of the rope. The employer shall certify (in writing) upon request of OSHA that the ropes have been inspected in accordance with the provisions of this paragraph.
* * * * *

6. In § 1910.181, paragraphs (g)(1) introductory text and (g)(3) would be revised to read as follows:

§ 1910.181 Derricks.

* * * * *
(g) * * *
(1) *Running ropes.* A thorough inspection of all ropes in use shall be made at least once a month. The employer shall certify (in writing) upon request of OSHA that a monthly inspection of all ropes in use has been performed. Any deterioration, resulting in appreciable loss of original strength, such as described below, shall be carefully observed and determination made as to whether further use of the rope would constitute a safety hazard:
* * * * *
(3) *Idle ropes.* All rope which has been idle for a period of a month or more due to shutdown or storage of a derrick on which it is installed shall be given a thorough inspection before it is placed in service. This inspection shall be for all types of deterioration. The employer shall certify (in writing) upon request of OSHA that the ropes have been inspected in accordance with the provisions of this paragraph.
* * * * *

7. In § 1910.217, paragraphs (e)(1) (i) and (ii) would be revised to read as follows:

§ 1910.207 Mechanical power presses.

* * * * *
(e) * * *
(1) * * *
(i) It shall be the responsibility of the employer to establish and follow a program of periodic and regular inspections of his power presses to insure that all their parts, auxiliary equipment, and safeguards are in safe operating conditions and adjustment. The employer shall certify (in writing) upon request of OSHA that inspections and maintenance of power presses have been performed in accordance with the provisions of this paragraph.
(ii) Each press shall be inspected and tested no less than weekly to determine the condition of the clutch/brake mechanism, antirepeat feature and single stroke mechanism. Necessary maintenance or repair or both shall be performed and completed before the press is operated. These requirements do not apply to those presses which comply with paragraphs (b) (13) and (14) of this section. The employer shall certify (in writing) upon request of OSHA that the presses have been inspected, tested and maintained in accordance with the requirements of this paragraph.
* * * * *

8. In § 1910.218, paragraphs (a)(2) (i) and (ii) would be revised to read as follows:

§ 1910.218 Forging machines.

(a) * * *
(2) * * *
(i) Establishing periodic and regular maintenance safety checks. The employer shall certify (in writing) upon request of OSHA that a periodic and regular maintenance safety check has

been established of all forge shop equipment as required in this paragraph.

(ii) Scheduling inspection of guards and point of operation protection devices at frequent and regular intervals. The employer shall certify (in writing) upon request of OSHA that the guards and point of operations protection devices have been inspected as required in this paragraph.

* * * * *

9. In § 1910.252, paragraph (c)(6) would be revised to read as follows:

§ 1910.252 Welding, cutting and brazing.

* * * * *

(c) * * *

(6) *Maintenance.* Periodic inspections shall be made by qualified maintenance personnel. The operator shall be instructed to report any equipment defects to his supervisor and the use of the equipment shall be discontinued until safety repairs have been completed. The employer shall certify (in writing) upon request of OSHA that the inspections required by this paragraph have been performed.

* * * * *

10. In § 1910.440, remove and reserve paragraph (a)(1).

§ 1910.440 Recordkeeping requirements.

(a) * * *

(1) [Reserved]

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENTS

11. In § 1915.113, paragraph (b)(1) would be revised to read as follows:

§ 1915.113 Shackles and hooks.

* * * * *

(b) * * *

(1) The manufacturer's recommendations shall be followed in determining the safe working loads of the various sizes and types of specific and identifiable hooks. All hooks for which no applicable manufacturer's recommendations are available shall be tested to twice the intended safe working load before they are initially put into use. The employer shall certify (in writing) upon request that the test requirements of this paragraph have been conducted.

* * * * *

12. In § 1915.172, paragraph (d) would be revised to read as follows:

§ 1915.172 Portable air receivers and other unfired pressure vessels.

* * * * *

(d) The employer shall certify (in writing) upon request of OSHA, that such examinations and tests were conducted in accordance with paragraphs (a) and (b) of this section.

PART 1926—OCCUPATIONAL SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

13. In § 1926.550, paragraph (b)(2) would be revised to read as follows:

§ 1926.550 Cranes and derricks.

* * * * *

(b) * * *

(2) All crawler, truck, or locomotive cranes in use shall meet the applicable requirements for design, inspection, construction, testing, maintenance and operation as prescribed in the ANSI B30.5–1968, Safety Code for Crawler, Locomotive and Truck Cranes. Written inspection reports and records of critical items as prescribed in the ANSI B30.5–1968 standard are not required. However, the employer shall certify (in writing) upon request of OSHA that a monthly inspection of critical items in use such as brakes, crane hooks and ropes has been performed.

* * * * *

14. In § 1926.552, paragraph (c)(15) would be revised to read as follows:

§ 1926.552 Material hoists, personnel hoists and elevators.

* * * * *

(c) * * *

(15) Following assembly and erection of hoists, and before being put in service, an inspection and test of all function and safety devices shall be made under the supervision of a competent person. A similar inspection and test is required following major alteration of an existing installation. All hoists shall be inspected and tested at not more than 3-month intervals. The employer shall certify (in writing) upon request of OSHA that the inspections and tests required by this paragraph have been conducted.

15. In § 1926.903, paragraph (e) would be revised to read as follows:

§ 1926.903 Underground transportation of explosives.

* * * * *

(e) Trucks used for the transportation of explosives underground shall have the electrical system checked weekly to detect any failures which may constitute an electrical hazard. The employer shall certify (in writing) upon request of OSHA that the weekly inspection of these trucks was performed.

* * * * *

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Friday
January 3, 1986

Part VI

Office of Personnel Management

5 CFR Part 351
Reduction in Force; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending the reduction-in-force (RIF) regulations to give greater recognition to performance as a retention factor, strengthen the objectivity of the RIF process, and improve the efficiency of the system.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Donald L. Holum, (202) 632–6817.

SUPPLEMENTARY INFORMATION:

Background

Regulations published as final rules on October 25, 1983, at 48 FR 49462 et seq. concerning reduction in force (RIF) became effective on July 3, 1985. Subsequently, on August 30, 1985, OPM republished the text of these 5 CFR Part 351 regulations with a new formula for crediting performance at 50 FR 35506 et seq. as a proposed rulemaking, and invited comments on any and all aspects of this proposal. Comments on this proposed rulemaking were received from 21 agencies, 4 labor organizations, 3 other organizations, 5 members of Congress and 7 other individuals. These comments were carefully reviewed and considered in the development of the final regulations as discussed below.

Discussion of Final Regulations.

The major changes reflected in the final regulations are as follows:

1. Credit for Performance (§ 351.504)

The proposed regulations published on August 30, 1985, provided a new formula for computing the extra length of service credit an employee is entitled to receive for performance ratings in determining retention standing during RIF.

Under the proposed new crediting system, an employee would be entitled to receive additional service credit based on the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three annual performance ratings computed on the following basis:

—twenty (20) additional years of service for each performance rating of outstanding (Level 5) or equivalent;
—sixteen (16) additional years of service for each performance rating of exceeds fully successful (Level 4) of equivalent; or
—ten (10) additional years of service for each performance rating of fully successful (Level 3) or equivalent.

This new proposal represented a decrease compared to the weight given performance in the RIF regulations which went into effect on July 3, 1985. Under the August 30, 1985, proposal, an employee could gain a maximum of *20* extra years service credit from performance ratings. The regulations which went into effect on July 3, 1985, provide an employee with a maximum of *30* years extra credit.

In general, commenters felt that while the new formula proposed for performance crediting was an improvement, it still gave too much weight to high performance ratings in determining retention standing. To respond to these comments, and at the same time insure an appropriate balance between performance and seniority in determining RIF retention standing, the final regulations increase the weight given a fully successful (Level 3) performance rating from 10 to *12* additional years of service, without providing a corresponding increase in the weight given outstanding (Level 5) or exceeds fully successful (Level 4) ratings. The final regulations continue to provide a value of *20* additional years of service credit for each outstanding (Level 5) and *16* years for each exceeds fully successful (Level 4) rating. The regulations also continue to require that the sum of the extra years resulting from the employee's last three ratings be *averaged* (i.e., divided by three) to determine the final amount of extra service credit the employee would be entitled to receive.

2. Assignment Rights (Bump and Retreat) (§ 351.701)

To limit excessive disruption caused by bumping and retreating across the entire grade structure, the regulations which went into effect on July 3, 1985, and which were republished on August 30, 1985, limit an employee's "bump" right to a maximum of 2 grades (or 2 grade intervals, i.e., 4 grades, in cases where the normal advancement is to skip a grade, e.g. GS–7 to GS–9); and an employee's retreat right to positions previously held at the same grade level or one grade level lower. These regulations also prohibit clerical employees from bumping to nonclerical positions and vice versa. This was designed to provide an additional brake on the disruption caused by bumping during RIF.

Generally, those who commented on these provisions in the August 30, 1985, regulations opposed the grade level and occupational limitations on bump and retreat as too severe and said that they should be eased to insure the retention of experienced, senior employees. Several commenters expressed particular concern about the impact of the grade level limitations on the blue-collar work force where employees can advance 2 or 3 grades at a time.

To respond to these concerns the final regulations eliminate the clerical/nonclerical occupational restrictions on bumping altogether and increase the limits on bumping and retreating to a maximum of *three* grades or grade intervals. RIF implementation instructions which OPM will issue in the Federal Personnel Manual will provide further guidance on how to deal with special circumstances of bump and retreat in blue-collar positions. The final regulations also retain the special five grade retreat right for 30% disabled veterans, as had been provided in the regulations which went into effect on July 3, 1985.

3. Competitive Level (§ 351.403)

The regulations which went into effect on July 3, 1985, and which were republished on August 30, 1985 require that agencies establish RIF competitive levels at least 90 days prior to a RIF, and certify to OPM that this has been done. This was a new requirement which was not in the previous RIF regulations.

In general, commenters objected to this requirement and indicated that it would limit an agency's ability to conduct timely and effective reductions in force. In recognition of these concerns, OPM is dropping both the requirement that competitive levels be in effect a minimum of 90 days prior to a RIF, as well as the requirement that agencies certify to OPM that this requirement has been met.

4. Competitive Area (§ 351.402)

The regulations which went into effect on July 3, 1985, and which were republished on August 30, 1985, contain both a new definition of what constitutes a minimum competitive area as well as a requirement that an agency obtain OPM approval for any changes in the competitive area which are made less than 90 days before the RIF effective date.

The new definition of competitive area is designed to provide agencies with better guidance on what constitutes a minimum competitive area for RIF purposes. The new definition uses terms such as "bureau, major command, directorate, or other equivalent major subdivision" to describe the minimum

permissible competitive area. These terms are more precise than the previous definition provided. Several commenters, however, said that the new definition was confusing. They asked that the previous definition be retained.

It is OPM's view that any perception of difficulty with the new definition is more likely due to the fact that detailed FPM guidance has not yet been issued on the subject, rather than any inherent problems with the new definition. For this reason the final RIF regulations retain the new definition of minimum competitive area.

Concerns were also expressed about the requirement for OPM approval of changes made in competitive areas within 90 days of a RIF. Several commenters felt that this was an unnecessary restriction which would create a burdensome reporting and approval process. OPM, however, has decided to retain this requirement in the final regulations, in the interest of insuring a fair and objective RIF system.

5. Removal of Job Erosion Actions From RIF Coverage (§ 351.202)

Under the regulations which went into effect July 3, 1985, and which were republished on August 30, 1985, job reclassification brought about by erosion of duties is no longer covered under reduction-in-force procedures. This action was taken to permit agencies to correct grades of jobs where the duties had gradually eroded, without having to experience the disruption caused by RIF. Although employees whose jobs are reclassified due to erosion of duties have appeal rights (through the classification appeal process) and are covered by retained pay and grade provisions, several of the commenters objected to this change. The objections to this change were primarily on the grounds that it created a potential for manipulation which could be used to target individual employees.

In recognition of these concerns the final regulations retain the general exception of reclassification due to job erosion from RIF coverage but also include a new provision which is designed to provide additional safeguards in this situation. The new provision extends RIF coverage to *any* reclassification actions attributable to job erosion, where the reclassification action will take effect after an agency has formally announced a RIF in the employee's competitive area and when the reduction in force will take effect within 180 days. The requirement to use RIF procedures in this situation ends at the completion of the reduction in force in question.

6. RIF Appeals and Hearings (§ 351.902)

In the RIF regulations which went into effect on July 3, 1985, and which were republished on August 30, 1985, reassignments which occur during RIF (where that reassignment requires displacement of another employee) are no longer appealable to the Merit Systems Protection Board (MSPB). The rationale for this change is that such reassignments do not affect the grade, pay, or tenure of an employee and are no different than an administrative reassignment which is never appealable to MSPB. This provision is continued in the final regulations.

The regulations also provide that unless MSPB determines there are material issues of fact in dispute, the review of the matter in a RIF appeal will be confined to the written record. Whether and to what extent a hearing should be held in a particular case is a matter for determination by the Board.

Comments on these provisions were primarily directed at the change in the RIF hearing process. Several commenters expressed the view that the change would conflict with the hearing procedures in 5 U.S.C. 7701(a)(1). OPM, however, has decided to retain the appeal provision with its prescribed hearing procedure in the final regulations, in the interest of efficiency in Government operations.

7. Effective Date

Another major concern identified by commenters was the timetable for implementation of the new regulations. Under the August 30, 1985, Federal Register Notice, as an exception to the implementation of regulations which were effective on July 3, 1985, agencies were permitted to continue to use the regulations which had been in effect prior to July 3, 1985, for RIF actions which had been in the planning process prior to July 3, 1985, and which would be effective on or before December 31, 1985. Some agencies felt that because of the extensive lead time required for implementation of the RIF regulations, OPM should provide a further extension on permissible use of the 5 CFR Part 351 regulations which were in effect prior to July 3, 1985. OPM, however, has determined that the regulations in effect prior to July 3, 1985, have expired and cannot be used beyond December 31, 1985. The final rules published herein are effective February 3, 1986, and must be used for all reduction in force actions which are effective on or after that date.

8. Other

Several other sections were amended to update or drop obsolete references. The definition of transfer of function (§ 351.203) was clarified to reflect recent Merit Systems Protection Board decisions that transfer of function does not occur when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected. *Neilson* v. *Federal Highway Administration*, MSPB Docket No. PH 03518310107 (June 7, 1984). For reference, the final regulations also include both word descriptions of performance levels (e.g., "outstanding"), as well as the new numerical designations now used in Part 430 of the regulations (e.g., "Level 5").

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies.

List of Subjects in 5 CFR Part 351

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the authority citation and Subparts A through I of Part 351 of 5 CFR are revised to read as follows. The authority citation following § 35.1005 is removed.

PART 351—REDUCTION IN FORCE

Subpart A—[Reserved]

Subpart B—General Provisions

Sec.

Subpart C—Transfer of Function

Subpart D—Scope of Competition

Subpart E—Retention Standing

* * * * *

Authority: 5 U.S.C. 1302, 3502; § 351.1005 also issued under 5 U.S.C. 3315.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a)(1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position die to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.

(b) This part does not require an agency to fill a vacant position. However, when an agency, at its discretion, chooses to fill a vacancy by an employee who has been reached for release from a competitive level for one of the reasons in paragraph (a)(2) of this section, this part shall be followed.

(c) Each agency is responsible for assuring that the provisions in this part are uniformly and consistently applied in any one reduction in force.

(d) An agency authorized to administer foreign national employee programs under section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968) may include special plans for reduction in force in its foreign national employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

§ 351.202 Coverage.

(a) *Employees covered.* Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government; and

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder. Coverage includes administrative law judges except as modified by Part 930 of this chapter.

(b) *Employees excluded.* This part does not apply to an employee:

(1) In a position in the Senior Executive Service; or

(2) Whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the United States Senate, except a postmaster.

(c) *Actions excluded.* This part does not apply to:

(1) The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

(2) A change to lower grade based on the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error.

(3) A change to lower grade based on reclassification of an employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days. This exception ends at the completion of the reduction in force.

(4) The change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

(5) The release from a competitive level of a National Guard technician under section 709 of title 32, United States Code.

(6) Placement of an employee serving on an intermittent, part-time, on-call, or seasonal basis in a nonpay and nonduty status in accordance with conditions established at time of appointment.

§ 351.203 Definitions.

In this part:

"Annual Performance Rating of Record" means an official performance rating under a performance appraisal system approved by OPM in accordance with 5 U.S.C., chapter 43; or for an agency not subject to chapter 43, an official performance rating as provided for in the agency's appraisal system.

"Competing employee" means an employee in tenure group I, II, or III.

"Days" means calendar days.

"Function" means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

"Local commuting area" means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

"Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

"Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position. Employees covered by the Performance Management and Recognition System are General Schedule employees for purposes of determining representative rate.

"Transfer of function" means the transfer of the performance of a

continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force through the Federal Personnel Manual system. OPM may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM may require appropriate corrective action.

Subpart C—Transfer of Function

§ 351.301 Applicability.

This subpart is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function, regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One a competing employee is identified with a transferring function if:

(1) The employee performs the function during all or a major part of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her working time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Under Identification Method Two, competing employees are identified with a transferring function in the inverse order of their retention standing.

(e)(1) The competitive area losing the function may permit other employees in the competitive area to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of his or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area should give preference to the volunteers with the highest retention standing.

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Sex may not be the basis for assigning a position to a competitive level, except for a position which OPM has determined certification of eligibles by sex is justified.

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) *By service.* Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) *By appointment authority.* Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) *By pay schedule.* Separate levels shall be established for positions under different pay schedules.

(4) *By work schedule.* Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) *By supervisory or nonsupervisory status.* Separate levels shall be established for positions filled by a supervisor or management official as defined in 5 U.S.C. 7103(a)(10) and (11), except that a probationary period required by Subpart I of Part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(6) *By trainee status.* Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all of the characteristics covered in § 351.702(e)(1) through (e)(4) of this part.

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision under Part 432 of this chapter to remove him or her because of unacceptable (Level 1) or equivalent performance.

§ 351.405 Employees demoted because of unacceptable performance.

An employee who has received a written decision under Part 432 of this chapter to demote him or her because of unacceptable (Level 1) or equivalent performance competes under this part from the position to which he or she will be or has been demoted.

Subpart E—Retention Standing

§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

(1) By tenure group I, group II, group III; and

(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and

(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.)

(2) Group II includes each career-conditional employee and each employee serving a probationary period under Subpart H of Part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this chapter is in group II if that employee has not completed a probationary period under Subpart H of Part 315 of this chapter).

(3) Group III includes all employees serving under indefinite appointment, temporary appointment pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each nonpreference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d)(1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraph (d)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

§ 351.502 Order of retention—excepted service.

Competing employees in the excepted service shall be classified on retention registers in a way that corresponds to that under § 351.501 for employees in the competitive service having similar tenure of employment, veteran preference and performance ratings except that an employee who completes 1 year of current continuous excepted service under a temporary appointment is in tenure group III.

§ 351.503 Length of service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects the employee's creditable service:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee's total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or

(b)(2) of this section, the service equivalent allowed for performance ratings under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active service in the armed forces if the employee is considered a preference eligible under § 351.501(d) of this part.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Credit for performance.

(a) Annual performance ratings of record of outstanding (Level 5), exceeds fully successful (Level 4), fully successful (Level 3), minimally successful (Level 2), and unacceptable (Level 1), or equivalent, are those ratings established under Part 430 of this chapter.

(b) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's last three annual performance ratings of record received during the 3-year period prior to the date of issuance of specific reduction-in-force notices.

(c) Service credit for employees who do not have three actual annual performance ratings of record during the 3-year period prior to the date of issuance of specific reduction-in-force notices shall be determined as follows:

(1) An employee who has not received an annual performance rating of record shall receive credit for performance on the basis of three assumed ratings of fully successful (Level 3) or equivalent.

(2) An employee who has received at least one but fewer than three previous annual performance ratings of record shall receive credit for performance on the basis of the actual rating(s) received and of one, or two, assumed rating(s) of fully successful (Level 3) or equivalent, whichever is needed to credit the employee with three ratings.

(d) The additional service credit an employee for performance under this subpart shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (actual and/or assumed) annual performance ratings of record computed on the following basis:

(1) Twenty additional years of service for each performance rating of outstanding (Level 5) or equivalent;

(2) Sixteen additional years of service for each performance rating of exceeds fully successful (Level 4) or equivalent; or

(3) Twelve additional years of service for each performance rating of fully successful (Level 3) or equivalent.

(e) The current annual performance rating of record shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual performance rating of record; and

(2) An employee's current annual perfomance rating of record shall be presumed to be fully successful when the employee had been demoted or reassigned under Part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction-in-force notices has not received a rating for performance in the position to which demoted or reassigned.

§ 351.505 Records.

Each agency shall maintain the current correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and

(b) An employee of the agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in § 351.504:

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee is so released.

(b) The retention standing of each employee temporarily retained in a competitive level under § 351.608 is determined as of the date the employee would have been released from the competitive level had temporary retention action under § 351.608 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction-in-force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee's proper retention standing as of the effective date established by this section.

Subpart F—Release From Competitive Level

§ 351.601 Order of release from competitive level.

(a) Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under § 351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary appointment;

(b) A specifically limited temporary or term promotion;

(c) A written decision under Part 432 of this chapter of removal or demotion from the competitive level because of unacceptable performance.

§ 351.603 Actions subsequent to release from competitive level.

An employee reached for release from a competitive level shall be offered assignment to another position in accordance with Subpart G of this part. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under Subpart G, the employee shall be furloughed or separated.

§ 351.604 Use of furlough.

(a) An agency may furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months, it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply § 351.607 and § 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.601 or § 351.605, it shall give retention priorities over other employees in the same subgroup to each group I or II employee entitled under 38 U.S.C. 2021 or 2024, to retention, for 6 months or 1 year after restoration.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) An agency may make exception for not more than 90 days to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release of a higher-standing employee from the same competitive level:

(1) To continue an activity without undue interruption; or

(2) To satisfy a Government obligation to the retained employee; or

(3) When the temporary retention of the lower-standing employee does not adversely affect the right of any higher-standing employee who is released ahead of the lower-standing employee. The temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(b) When the agency retains an employee for more than 30 days after the effective date of release of a higher-standing employee from the same competitive level, it shall notify in writing each higher-standing employee reached for release of the reasons for the exception and the date the lower-standing employee's retention will end. When the agency retains a lower-standing employee, it shall list opposite the employee's name on the retention register the reasons for the exception and the date this employee's retention will end.

Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraph (b), (c), and (d) of this section to another competitive service position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position which shall be in the same competitive area and last at least three months.

(b) *Lower subgroup—bumping.* A released employee shall be assigned in accordance with paragraph (a) of this section and bump to a position that:

(1) Is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group; and

(2) Is no more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) *Same subgroup—retreating.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with lower retention standing in the same tenure group and subgroup;

(2) Is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent); and

(3) Is the same position, or an essentially identical one, previously held by the released employee in a Federal agency.

(d) *Limitation.* An employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent may be assigned under paragraph (c) of this section only to a position held by another employee with a current annual performance rating of record no higher than minimally successful (Level 2) or equivalent.

(e) *Pay rates.* (1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis of the pay rates in effect on the date of issuance of specific reduction-in-force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

§ 351.702 Qualifications for assignment.

(a) Except as provided in § 351.703, an employee is qualified for assignment under § 351.701 if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which the OPM has approved for the position; and

(4) Clearly demonstrates on the basis of overall background, including recency of experience, a positive ability to successfully perform all critical elements of the specific position upon entry into it, without undue interruption to that activity and without any loss of

productivity beyond that normally expected in the orientation of any new but fully qualified employee.

(b) The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for positions which OPM has determined certification of eligibles by sex is justified.

(c) An employee who is released from a competitive level during a leave of absence because of a corpensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines, on the basis of evidence before it, that a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the OPM of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within 15 days of the notification, to the OPM which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the OPM has completed its review of the proposed disqualification on the basis of physical disability, it must sent its finding to both the agency and the employee. The agency must comply with the findings of the OPM. The functions of the OPM under this paragraph may not be delegated to an agency.

(e) An agency may formally designate as a trainee or developmental position a position in a program with all of the following characteristics:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures. To be considered qualified for assignment under § 351.701 to a formally designated trainee or developmental position in a program having all of the characteristics covered in paragraphs (e)(1), (2), (3), and (4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

§ 351.703 Exception to qualifications.

An agency may assign an employee under § 351.201(b) or § 351.701 without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) § 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with § 351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III–AD to displace an employee in subgroup III–A or III–B, or permit an employee in subgroup III–A to displace an employee is subgroup III–B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights similar to those in § 351.701 and in paragraphs (a)(1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

Subpart H—Notice to Employee

§ 351.801 Notice period.

(a) Each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 30 full days before the effective date of release. When a general notice is supplemented by a specific notice, an agency may not release an employee from his or her competitive level until at least 10 days after the employee's receipt of the specific notice.

(b) The notice shall not be issued more than 90 days before release except with the prior approval of OPM.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.606 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

§ 351.802 General and specific notices.

When an agency cannot specifically determine all individual actions at the start of the notice period, it may issue general notices which shall later be supplemented by specific notices. The combined general and specific notice periods shall meet the requirements in § 351.801, and the combined contents of

the general and specific notices shall meet the requirements in § 351.803.

§ 351.803 Content of notice.

(a) The notice shall state specifically the action to be taken and its effective date except as provided in paragraph (b) of this section; the employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last three years; the place where the employee may inspect the regulations and records pertinent to this case; the reasons for retaining a lower-standing employee in the same competitive level under § 351.607 or § 351.608; the information on reemployment rights except as permitted by § 351.804; and the employee's right, as applicable, to grieve under a negotiated grievance procedure or to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) A general notice shall inform the employee that action under this part may be necessary but a specific action has not yet been determined. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall contain an expiration date. A general notice may also include other information specified in paragraph (a) of this section.

§ 351.804 Notice concerning consideration for reemployment.

An employee who receives a specific notice of separation under this part must also be given information concerning the right to reemployment consideration under the provisions of Subparts B and C of Part 330 of this chapter. This information should be included in or with the specific reduction-in-force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

§ 351.805 Expiration of notice.

(a) An agency may cancel an unexpired general notice, or may renew it for additional periods within the maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice.

(b) A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take action before the effective date in the specific notice. An action taken after the specified date in the specific notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or when it results in a notice period longer than the maximum allowed.

§ 351.806 New notice required.

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 Status during notice period.

When possible, the agency shall retain the employee on active duty during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, on leave without pay with his or her consent, or in a nonpay status without his or her consent.

Subpart I—Appeals and Corrective Action

§ 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action may appeal to the Merit Systems Protection Board. Unless the presiding official determines that there are material issues of fact in dispute that would require a hearing for resolution, the review of an agency action shall be confined to the written record.

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

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Federal Register

Friday
January 3, 1986

Part VII

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions.

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics empoyed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act and pursuant to the provisions of 29 CFR Part 1. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Notice of public comment procedures and a delay in the effective date as prescribed in 5 U.S.C. 553 were not provided prior to the issuance of these determinations, based on a finding of good cause. Because of the necessity to issue construction industry wage determinations frequently and in large volume, such procedures would have caused a delay and would have been impractical and contrary to the public interest.

General wage determination decisions contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Modifications and Supersedeas Decisions to General Wage Determinations

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

Such decisions contained no expiration date and are effective from the date that notice of such decisions is published in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

BILLING CODE 4510-27-M

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of notice in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

ALABAMA	AL82-1014	(AL86-1)	FEB. 26, 1982
ALABAMA	AL85-1004	(AL86-2)	MAY 31, 1985
ALABAMA	AL85-1005	(AL86-3)	MAY 31, 1985
ALABAMA	AL82-1049	(AL86-4)	SEPT. 24, 1982
ALABAMA	AL84-1032	(AL86-5)	NOV. 16, 1984
ALABAMA	AL83-1009	(AL86-6)	FEB. 18, 1983
ALABAMA	AL83-1053	(AL86-7)	JULY 29, 1983
ALABAMA	AL83-1001	(AL86-8)	JAN. 21, 1983
ALABAMA	AL83-1069	(AL86-9)	SEPT. 23, 1983
ALABAMA	AL83-1070	(AL86-10)	SEPT. 23, 1983
ALABAMA	AL83-1005	(AL86-11)	FEB. 4, 1983
ALABAMA	AL84-1016	(AL86-12)	JUNE 22, 1984
ALABAMA	AL82-1029	(AL86-13)	JUNE 6, 1982
ALABAMA	AL82-1028	(AL86-14)	MAY 14, 1982
ALABAMA	AL84-1015	(AL86-15	JUNE 22, 1984
ALABAMA	AL84-1019	(AL86-16)	JUNE 22, 1984
ALABAMA	AL84-1033	(AL86-17)	NOV. 16, 1984
ALABAMA	AL85-1011	(AL86-18)	NOV. 1, 1985
ALABAMA	AL84-1031	(AL86-19)	OCT. 19. 1984
ALABAMA	AL84-1030	(AL86-20)	SEPT. 7, 1984
ALABAMA	AL81-1128	(AL86-21)	DEC. 30, 1980
ALABAMA	AL81-1127	(AL86-22)	DEC. 30, 1980
ALABAMA	AL83-1039	(AL86-23)	MAY 6, 1983
ALABAMA	AL83-1038	(AL86-24)	MAY 6, 1983
ALABAMA	AL83-1037	(AL86-25)	MAY 6, 1983
ALABAMA	AL83-1036	(AL86-26)	MAY 6, 1983
ALABAMA	AL85-1006	(AL86-27)	JULY 26, 1985
ALASKA	AL82-5125	(AK86-1)	OCT. 22, 1982
ARIZONA	AZ83-5102	(AZ86-1)	MAR. 4, 1983
ARIZONA	AZ84-5005	(AZ86-2)	MAR. 9, 1984
ARIZONA	AZ83-5105	(AZ86-3)	MAR. 4, 1983
ARKANSAS	AR85-4043	(AR86-1)	OCT. 18, 1985
ARKANSAS	AR85-4044	(AR86-2)	OCT. 18, 1985
ARKANSAS	AR85-4030	(AR86-3)	AUG. 30, 1985
ARKANSAS	AR85-4036	(AR86-4)	AUG. 30, 1985
ARKANSAS	AR85-4045	(AR86-5)	OCT. 18, 1985
ARKANSAS	AR82-4064	(AR86-6)	NOV. 19, 1982
ARKANSAS	AR84-4053	(AR86-7)	AUG. 31, 1984
CALIFORNIA	CA85-5034	(CA86-1)	AUG. 23, 1985
CALIFORNIA	CA85-5035	(CA86-2)	SEPT. 6, 1985
CALIFORNIA	CA83-5116	(CA86-3)	AUG. 5, 1983
CALIFORNIA	CA85-5036	(CA86-4)	SEPT. 20, 1985
COLORADO	CO85-5021	(CO86-1)	APR. 12, 1985
COLORADO	CO84-5003	(CO86-2)	FEB. 24, 1984
COLORADO	CO82-5127	(CO86-3)	NOV. 5, 1982

COLORADO	CO85-5015	(CO86-4	MAR. 15, 1985
CONNECTICUT	CT85-3023	(CT86-1)	JUNE 7, 1985
CONNECTICUT	CT80-3078	(CT86-2)	DEC. 12. 1980
DELAWARE	DE83-3014	(DE86-1)	MAY 6, 1983
DELAWARE	DE85-3021	(DE86-2)	APR. 19, 1985
DIST. OF COL	DC84-3009	(DC86-1)	APR. 6, 1984
DIST. OF COL	DC80-3039	(DC86-2)	MAY 9, 1980
FLORIDA	FL85-3038	(FL86-1)	JULY 12, 1985
FLORIDA	FL84-1022	(FL86-2)	NOV. 23, 1984
FLORIDA	FL84-3038	(FL86-3)	SEPT. 28, 1984
FLORIDA	FL83-1034	(FL86-4)	APR. 29, 1983
FLORIDA	FL83-1030	(FL86-5)	APR. 22, 1983
FLORIDA	FL83-1033	(FL86-6)	APR. 29, 1983
FLORIDA	FL83-1023	(FL86-7)	APR. 15, 1983
FLORIDA	FL83-1022	(FL86-8)	APR. 15, 1983
FLORIDA	FL83-1032	(FL86-9)	APR. 15, 1983
FLORIDA	FL80-1083	(FL86-10)	NOV. 21, 1980
FLORIDA	FL83-1017	(FL86-11)	APR. 1. 1983
FLORIDA	FL83-1024	(FL86-12)	APR. 15, 1983
FLORIDA	FL83-1029	(FL86-13)	APR. 22, 1983
FLORIDA	FL84-1020	(FL86-14)	JUNE 22, 1984
FLORIDA	FL83-1058	(FL86-15)	AUG. 19, 1983
FLORIDA	FL83-1018	(FL86-16)	SEPT. 9, 1983
FLORIDA	FL85-3024	(FL86-17)	APR. 26, 1985
FLORIDA	FL81-1256	(FL86-18)	JUNE 26, 1981
FLORIDA	FL83-1083	(FL86-19)	OCT. 14, 1983
FLORIDA	FL80-1039	(FL86-20)	JAN. 4, 1980
FLORIDA	FL81-1198	(FL86-21)	MAR. 20, 1981
FLORIDA	FL81-1269	(FL86-22)	JULY 17, 1981
FLORIDA	FL81-1180	(FL86-23)	JAN. 23, 1981
FLORIDA	FL82-1031	(FL86-24)	JUNE 4, 1982
FLORIDA	FL81-1313	(FL86-25)	NOV. 20, 1981
FLORIDA	FL80-1118	(FL86-26)	NOV. 7, 1980
FLORIDA	FL83-1004	(FL86-27)	JAN. 21, 1983
FLORIDA	FL77-1003	(FL86-28)	JAN. 21, 1977
FLORIDA	FL82-1085	(FL86-29)	DEC. 3, 1982
FLORIDA	FL81-1188	(FL86-30)	FEB. 13, 1981
FLORIDA	FL81-1187	(FL86-31)	FEB. 13, 1981
FLORIDA	FL82-1086	(FL86-32)	DEC. 3, 1982
FLORIDA	FL79-1098	(FL86-33)	JUNE 1, 1979
FLORIDA	FL83-1012	(FL86-34)	MAR. 11, 1983
FLORIDA	FL83-1048	(FL86-35)	JUNE 24, 1983
FLORIDA	FL83-1046	(FL86-36)	JUNE 24, 1983
FLORIDA	FL83-1049	(FL86-37)	JUNE 24, 1983
FLORIDA	FL83-1045	(FL86-38)	JUNE 24, 1983
FLORIDA	FL83-1047	(FL86-39)	JUNE 24, 1983
FLORIDA	FL83-1043	(FL86-40)	JUNE 24, 1983
FLORIDA	FL83-1044	(FL86-41)	JUNE 24, 1983
FLORIDA	FL83-1042	(FL86-42)	JUNE 24, 1983
FLORIDA	FL83-1041	(FL86-43)	JUNE 24, 1983
FLORIDA	FL83-1050	(FL86-44)	JUNE 24, 1983
GEORGIA	GA81-1233	(GA86-1)	MAY 22, 1981
GEORGIA	GA83-1057	(GA86-2)	AUG. 19, 1983
GEORGIA	GA85-3022	(GA86-3)	APR. 19, 1985
GEORGIA	GA82-1058	(GA86-4)	OCT. 8, 1982

GEORGIA	GA78-1024	(GA86-5)	MAR. 10, 1978
GEORGIA	GA77-1068	(GA86-6)	MAY 20, 1977
GEORGIA	GA82-1002	(GA86-7)	FEB. 5, 1982
GEORGIA	GA82-1048	(GA86-8)	SEPT. 17, 1982
GEORGIA	GA84-3032	(GA86-9)	AUG. 10, 1984
GEORGIA	GA84-3047	(GA86-10)	DEC. 7, 1984
GEORGIA	GA84-3046	(GA86-11)	DEC. 7, 1984
GEORGIA	GA84-3045	(GA86-12)	DEC. 7, 1984
GEORGIA	GA81-1231	(GA86-13	MAY 22. 1981
GEORGIA	GA82-1044	(GA86-14)	SEPT. 10, 1982
GEORGIA	GA81-1212	(GA86-15)	APR. 24, 1981
GEORGIA	GA81-1211	(GA86-16)	APR. 24, 1981
GEORGIA	GA81-1241	(GA86-17)	JUNE 5, 1981
GEORGIA	GA81-1208	(GA86-18)	APR. 17, 1981
GEORGIA	GA81-1304	(GA86-19)	OCT. 30, 1981
GEORGIA	GA81-1278	(GA86-20)	AUG. 21, 1981
GEORGIA	GA83-1054	(GA86-21)	AUG. 5, 1983
GEORGIA	GA83-1003	(GA86-22)	JAN. 21, 1983
GUAM	GU79-5134	(GU86-1)	SEPT. 28, 1979
HAWAII	HI84-5019	(HI86-1)	JULY 20, 1984
IDAHO	ID85-5010	(ID86-1)	FEB. 15, 1985
IDAHO	ID85-5012	(ID86-2)	MAR. 22, 1985
IDAHO	ID85-5014	(ID86-3)	MAR. 1, 1985
IDAHO	ID85-5013	(ID86-4)	MAR. 1, 1985
ILLINOIS	IL85-5040	(IL86-1)	OCT. 18, 1985
ILLINOIS	IL85-5007	(IL86-2)	FEB. 8, 1985
ILLINOIS	IL85-5002	(IL86-3)	JAN. 11, 1985
ILLINOIS	IL85-5041	(IL86-4)	OCT. 18, 1985
ILLINOIS	IL85-5003	(IL86-5)	JAN. 18, 1985
ILLINOIS	IL85-5004	(IL86-6)	JAN. 18, 1985
ILLINOIS	IL84-5008	(IL86-7)	MAR. 23, 1984
ILLINOIS	IL85-5005	(IL86-8)	JAN. 25, 1985
ILLINOIS	IL85-5020	(IL86-9)	APR. 5, 1985
ILLINOIS	IL83-2062	(IL86-10)	JULY 7, 1983
ILLINOIS	IL85-5018	(IL86-11)	MAR. 8, 1985
ILLINOIS	IL85-5042	(IL86-12)	OCT. 18, 1985
ILLINOIS	IL83-2034	(IL86-13)	APR. 8, 1985
ILLINOIS	IL83-2043	(IL86-14)	JUNE 3, 1983
ILLINOIS	IL85-5011	(IL86-15)	FEB. 22, 1985
ILLINOIS	IL85-5027	(IL86-16)	JUNE 21, 1985
ILLINOIS	IL85-5017	(IL86-17)	MAR. 8, 1985
ILLINOIS	IL83-2037	(IL86-18)	APR. 29, 1983
ILLINOIS	IL83-2004	(IL86-19)	MAR. 13, 1981
INDIANA	IN83-2072	(IN86-1)	SEPT. 2, 1983
INDIANA	IN83-2071	(IN86-2)	SEPT. 9, 1983
INDIANA	IN83-2069	(IN86-3)	SEPT. 2, 1983
INDIANA	IN83-2067	(IN86-4)	SEPT. 2, 1983
INDIANA	IN83-2070	(IN86-5)	SEPT. 2, 1983
INDIANA	IN83-2073	(IN86-6)	SEPT. 9, 1983
INDIANA	IN82-2072	(IN86-7)	JAN. 7, 1982
INDIANA	IN80-2087	(IN86-8)	NOV. 7, 1980
INDIANA	IN80-2012	(IN86-9)	MAR. 21, 1980
INDIANA	IN83-2065	(IN86-10)	AUG. 12, 1983
INDIANA	IN83-2019	(IN86-11)	MAR. 11, 1983
INDIANA	IN81-2061	(IN86-12)	OCT. 30, 1981

INDIANA	IN82-2070	(IN86-13)	JAN. 3, 1983
INDIANA	IN82-2039	(IN86-14)	JUNE 4, 1982
IOWA	IA85-4017	(IA86-1)	JUNE 14, 1985
IOWA	IA85-4016	(IA86-2)	JUNE 14, 1985
IOWA	IA84-4031	(IA86-3)	MAY 11, 1984
IOWA	IA84-4109	(IA86-4)	DEC. 21, 1984
IOWA	IA85-4047	(IA86-5)	NOV. 15, 1985
IOWA	IA84-4042	(IA86-6)	JUNE 15, 1984
IOWA	IA85-4040	(IA86-7)	SEPT. 27, 1985
IOWA	IA80-4025	(IA86-8)	APR. 4, 1980
IOWA	IA85-4046	(IA86-9)	NOV. 1, 1985
KANSAS	KS80-4069	(KS86-1)	AUG. 15, 1980
KANSAS	KS83-4084	(KS86-2)	NOV. 25, 1983
KANSAS	KS85-4006	(KS86-3)	MAY 10, 1985
KANSAS	KS85-4007	(KS86-4)	MAY 10, 1985
KANSAS	KS85-4008	(KS86-5)	MAY 10, 1985
KANSAS	KS85-4009	(KS86-6)	MAY 10, 1985
KANSAS	KS84-4107	(KS86-7)	DEC. 14, 1984
KANSAS	KS84-4053	(KS86-8)	AUG. 24, 1984
KANSAS	KS84-4052	(KS86-9)	AUG. 24, 1984
KENTUCKY	KY84-1003	(KY86-1)	MAR. 9, 1984
KENTUCKY	KY84-1006	(KY86-2)	MAR. 16, 1984
KENTUCKY	KY84-1009	(KY86-3)	MAR. 23, 1984
KENTUCKY	KY84-1008	(KY86-4)	MAR. 16, 1984
KENTUCKY	KY84-1010	(KY86-5)	MAR. 30, 1984
KENTUCKY	KY84-1011	(KY86-6)	MAR. 23, 1984
KENTUCKY	KY84-1007	(KY86-7)	MAR. 16, 1984
KENTUCKY	KY83-1055	(KY86-8)	AUG. 5, 1983
KENTUCKY	KY83-1020	(KY86-9)	APR. 15, 1983
KENTUCKY	KY83-1025	(KY86-10)	APR. 15, 1983
KENTUCKY	KY84-1012	(KY86-11)	JUNE 1, 1984
KENTUCKY	KY81-1186	(KY86-12)	FEB. 13, 1981
KENTUCKY	KY83-1027	(KY86-13)	APR. 15, 1983
KENTUCKY	KY83-1026	(KY86-14)	APR. 15, 1983
KENTUCKY	KY83-1056	(KY86-15)	AUG. 12, 1983
KENTUCKY	KY83-1067	(KY86-16)	SEPT. 23, 1983
KENTUCKY	KY80-1103	(KY86-17)	SEPT. 26, 1980
KENTUCKY	KY83-1019	(KY86-18)	APR. 8, 1983
KENTUCKY	KY84-1017	(KY86-19)	JUNE 22, 1984
KENTUCKY	KY83-1068	(KY86-20)	SEPT. 23, 1983
KENTUCKY	KY83-1065	(KY86-21)	SEPT. 23, 1983
KENTUCKY	KY83-1066	(KY86-22)	SEPT. 23, 1983
KENTUCKY	KY81-1171	(KY86-23)	JAN. 9, 1981
KENTUCKY	KY81-1207	(KY86-24)	APR. 17, 1981
KENTUCKY	KY85-1007	(KY86-25)	OCT. 4, 1985
KENTUCKY	KY85-1008	(KY86-26)	OCT. 4, 1985
KENTUCKY	KY85-1009	(KY86-27)	OCT. 4, 1985
KENTUCKY	KY85-1010	(KY86-28)	OCT. 4, 1985
LOUISIANA	LA85-4029	(LA86-1)	AUG. 30, 1985
LOUISIANA	LA85-4028	(LA86-2)	AUG. 9, 1985
LOUISIANA	LA79-4060	(LA86-3)	APR. 6, 1979
LOUISIANA	LA84-4059	(LA86-4)	OCT. 5, 1984
LOUISIANA	LA85-4020	(LA86-5)	AUG. 9, 1985
MAINE	ME83-3007	(ME86-1)	APR. 15, 1983
MAINE	ME84-3031	(ME86-2)	NOV. 16, 1984

MAINE	ME83-3041	(ME86-3)	SEPT. 2, 1983
MARYLAND	MD85-3041	(MD86-1)	JULY 25, 1985
MARYLAND	MD85-3053	(MD86-2)	SEPT. 27, 1985
MARYLAND	MD81-3052	(MD86-3)	AUG. 14, 1981
MARYLAND	MD81-3017	(MD86-4)	APR. 3, 1981
MARYLAND	MD81-3012	(MD86-5)	FEB. 6, 1981
MARYLAND	MD82-3036	(MD86-6)	DEC. 10, 1982
MARYLAND	MD81-3087	(MD86-7)	DEC. 4, 1981
MARYLAND	MD80-3021	(MD86-8)	APR. 11, 1980
MARYLAND	MD80-3014	(MD86-9)	MAR. 28, 1980
MARYLAND	MD83-3006	(MD86-10)	APR. 8, 1983
MARYLAND	MD84-3039	(MD86-11)	NOV. 9, 1984
MARYLAND	MD84-3011	(MD86-12)	APR, 20, 1984
MARYLAND	MD79-3034	(MD86-13)	OCT. 12, 1979
MARYLAND	MD79-3035	(MD86-14)	OCT. 12, 1979
MARYLAND	MD85-3045	(MD86-15)	SEPT. 6, 1985
MASSACHUSSETTS	MA85-3013	(MA86-1)	MAR. 15, 1985
MASSACHUSSETTS	MA85-3014	(MA86-2)	MAR. 15, 1985
MASSACHUSSETTS	MA85-3015	(MA86-3)	MAR. 15, 1985
MICHIGAN	MI85-5001	(MI86-1)	JUNE 14, 1985
MICHIGAN	MI85-5022	(MI86-2)	JUNE 7, 1985
MICHIGAN	MI83-2018	(MI86-3)	MAR. 11, 1983
MICHIGAN	MI83-2008	(MI86-4)	FEB. 11, 1983
MICHIGAN	MI85-5024	(MI86-5)	JUNE 28, 1985
MICHIGAN	MI85-5019	(MI86-6)	MAR. 8, 1985
MICHIGAN	MI84-5026	(MI86-7)	DEC. 21, 1984
MICHIGAN	MI83-2024	(MI86-8)	MAR. 10, 1983
MICHIGAN	MI84-5013	(MI86-9)	MAY 18, 1984
MICHIGAN	MI83-2025	(MI86-10)	MAR. 10, 1983
MICHIGAN	MI81-2057	(MI86-11)	AUG. 28, 1981
MICHIGAN	MI83-2020	(MI86-12)	MAR. 18, 1983
MICHIGAN	MI82-2005	(MI86-13)	FEB. 18, 1982
MICHIGAN	MI84-5004	(MI86-14)	MAR. 9. 1984
MICHIGAN	MI84-5011	(MI86-15)	APR, 13, 1984
MICHIGAN	MI81-2056	(MI86-16)	AUG. 21. 1981
MICHIGAN	MI83-2009	(MI86-17)	FEB. 11, 1983
MINNESOTA	MN85-5029	(MN86-1)	JUNE 28, 1985
MINNESOTA	MN84-5010	(MN86-2)	MAR. 30, 1984
MINNESOTA	MN83-2003	(MN86-3)	JAN. 21, 1983
MINNESOTA	MN83-2028	(MN86-4)	APR. 1, 1983
MINNESOTA	MN85-5000	(MN86-5)	JAN. 11, 1985
MINNESOTA	MN84-5021	(MN86-6)	JULY 20, 1984
MINNESOTA	MN85-5006	(MN86-7)	FEB. 1, 1985
MINNESOTA	MN84-5015	(MN86-8)	MAY 25, 1984
MISSISSIPPI	MS83-1015	(MS86-1)	APR. 1, 1983
MISSISSIPPI	MS82-1069	(MS86-2)	OCT. 15, 1982
MISSISSIPPI	MS83-1014	(MS86-3)	MAR. 25, 1983
MISSISSIPPI	MS81-1244	(MS86-4)	JUNE 12, 1981
MISSISSIPPI	MS81-1280	(MS86-5)	AUG. 21, 1981
MISSISSIPPI	MS84-1021	(MS86-6)	JULY 6, 1984
MISSISSIPPI	MS82-1061	(MS86-7)	OCT. 8, 1982
MISSISSIPPI	MS81-1297	(MS86-8)	OCT. 16, 1981
MISSISSIPPI	MS82-1070	(MS86-9)	OCT. 15, 1982
MISSISSIPPI	MS83-1072	(MS86-10)	SEPT. 30, 1983
MISSISSIPPI	MS83-1071	(MS86-11)	SEPT. 30, 1983

MISSISSIPPI	MS81-1310	(MS86-12)	OCT. 30, 1981
MISSISSIPPI	MS83-1073	(MS86-13)	SEPT. 30, 1983
MISSISSIPPI	MS84-1014	(MS86-14)	JUNE 22, 1984
MISSISSIPPI	MS82-1084	(MS86-15)	DEC. 3, 1982
MISSISSIPPI	MS82-1030	(MS86-16)	MAY 28, 1982
MISSISSIPPI	MS81-1232	(MS86-17)	MAY 22, 1981
MISSISSIPPI	MS83-1074	(MS86-18)	SEPT. 30, 1983
MISSISSIPPI	MS82-1024	(MS86-19)	ARP. 2, 1982
MISSISSIPPI	MS82-1001	(MS86-20)	FEB. 5, 1982
MISSISSIPPI	MS85-1002	(MS86-21)	JAN. 25, 1985
MISSISSIPPI	AR81-4029	(MS86-22)	APR. 24, 1981
MISSISSIPPI	MS85-1002	(MS86-23)	JAN. 25, 1985
MISSISSIPPI	MS85-1002	(MS86-24)	JAN. 25, 1985
MISSOURI	MO85-4023	(MO86-1)	AUG. 23, 1985
MISSOURI	MO85-4038	(MO86-2)	SEPT. 6, 1985
MISSOURI	MO85-4031	(MO86-3)	SEPT. 20, 1985
MISSOURI	MO85-4025	(MO86-4)	AUG. 9, 1985
MISSOURI	MO85-4022	(MO86-5)	JULY 26, 1985
MISSOURI	MO85-4027	(MO86-6)	AUG. 9, 1985
MISSOURI	MO85-4026	(MO86-7)	AUG. 9, 1985
MISSOURI	MO85-4024	(MO86-8)	AUG. 9, 1985
MISSOURI	MO85-4049	(MO86-9)	NOV. 22, 1985
MISSOURI	MO85-4032	(MO86-10)	SEPT. 6, 1985
MISSOURI	MO85-4048	(MO86-11)	NOV. 15, 1985
MONTANA	MT84-5041	(MT86-1)	DEC. 14, 1984
MONTANA	MT83-5101	(MT86-2)	FEB. 18, 1983
MONTANA	MT81-5140	(MT86-3)	AUG. 7, 1981
NEBRASKA	NE84-4029	(NE86-1)	MAR. 4, 1984
NEBRASKA	NE84-4030	(NE86-2)	MAY 4, 1984
NEBRASKA	NE84-4019	(NE86-3)	APR. 27, 1984
NEBRASKA	NE83-4070	(NE86-4)	OCT. 7, 1983
NEBRASKA	NE85-4033	(NE86-5)	AUG. 16, 1985
NEBRASKA	NE84-4103	(NE86-6)	NOV. 2, 1984
NEBRASKA	NE83-4041	(NE86-7)	MAY 27, 1983
NEBRASKA	NE85-4004	(NE86-8)	APR. 12, 1985
NEBRASKA	NE84-4048	(NE86-9)	AUG. 10, 1984
NEVADA	NV84-5014	(NV86-1)	JUNE 8, 1984
NEVADA	NV84-5012	(NV86-2)	MAY 18, 1984
NEVADA	NV83-5121	(NV86-3)	SEPT. 23, 1983
NEVADA	NV84-5017	(NV86-4)	JUNE 29, 1984
NEW HAMPSHIRE	NH84-3023	(NH86-1)	JULY 6, 1984
NEW HAMPSHIRE	NH84-3014	(NH86-2)	MAY 11, 1984
NEW HAMPSHIRE	NH84-3022	(NH86-3)	JULY 6, 1984
NEW HAMPSHIRE	NH82-3018	(NH86-4)	APR. 30, 1982
NEW JERSEY	NJ85-3027	(NJ86-1)	MAY 10, 1985
NEW JERSEY	NJ85-3032	(NJ86-2)	JULY 19, 1985
NEW JERSEY	NJ85-3031	(NJ86-3)	AUG. 2, 1985
NEW JERSEY	NJ85-3033	(NJ86-4)	JULY 12, 1985
NEW JERSEY	NJ82-3029	(NJ86-5)	OCT. 15, 1982
NEW JERSEY	NJ79-3013	(NJ86-6)	JUNE 22, 1979
NEW MEXICO	NM85-4014	(NM86-1)	JUNE 14, 1985
NEW MEXICO	NM84-4105	(NM86-2)	NOV. 30, 1984
NEW YORK	NY85-3009	(NY86-1)	FEB. 1, 1985
NEW YORK	NY85-3040	(NY86-2)	JULY 26, 1985
NEW YORK	NY85-3056	(NY86-3)	DEC. 6, 1985

NEW YORK	NY85-3039	(NY86-4)	JULY 26, 1985
NEW YORK	NY85-3044	(NY86-5)	AUG. 23, 1985
NEW YORK	NY85-3042	(NY86-6)	SEPT. 20, 1985
NEW YORK	NY83-3018	(NY86-7)	MAY 20, 1983
NEW YORK	NY85-3055	(NY86-8)	NOV. 29, 1985
NEW YORK	NY85-3019	(NY86-9)	MAR. 29, 1985
NEW YORK	NY85-3018	(NY86-10)	MAR. 29, 1985
NEW YORK	NY85-3026	(NY86-11)	MAY 10, 1985
NEW YORK	NY85-3043	(NY86-12)	AUG. 23, 1985
NEW YORK	NY83-3027	(NY86-13)	JULY 22, 1983
NEW YORK	NY84-3050	(NY86-14)	DEC. 21, 1984
NEW YORK	NY85-3007	(NY86-15)	FEB. 1, 1985
NEW YORK	NY85-3036	(NY86-16)	JULY 5, 1985
NEW YORK	NY84-3036	(NY86-17)	SEPT. 14, 1984
NEW YORK	NY81-3062	(NY86-18)	SEPT. 11, 1981
NORTH CAROLINA	NC81-1303	(NC86-1)	OCT. 23, 1981
NORTH CAROLINA	NC81-1144	(NC86-2)	DEC. 30, 1980
NORTH CAROLINA	NC81-1301	(NC86-3)	OCT. 23, 1981
NORTH CAROLINA	NC81-1201	(NC86-4)	APR. 3, 1981
NORTH CAROLINA	NC81-1140	(NC86-5)	DEC. 30, 1980
NORTH CAROLINA	NC82-1021	(NC86-6)	MAR. 26, 1982
NORTH CAROLINA	NC81-1200	(NC86-7)	APR. 3, 1981
NORTH CAROLINA	NC81-1142	(NC86-8)	DEC. 30, 1980
NORTH CAROLINA	NC84-1004	(NC86-9)	MAR. 9, 1984
NORTH CAROLINA	NC85-3047	(NC86-10)	SEPT. 6, 1985
NORTH CAROLINA	NC85-3046	(NC86-11)	SEPT. 6, 1985
NORTH CAROLINA	NC81-1302	(NC86-12)	OCT. 23, 1981
NORTH CAROLINA	NC80-1138	(NC86-13)	DEC. 30, 1980
NORTH CAROLINA	NC80-1059	(NC86-14)	FEB. 29, 1980
NORTH CAROLINA	NC79-1082	(NC86-15)	MAY 11, 1979
NORTH CAROLINA	NC83-1013	(NC86-16)	APR. 29, 1983
NORTH CAROLINA	NC80-1076	(NC86-17)	JUNE 27, 1980
NORTH CAROLINA	NC83-1078	(NC86-18)	OCT. 7, 1983
NORTH CAROLINA	NC83-1079	(NC86-19)	OCT. 7, 1983
NORTH CAROLINA	NC83-1080	(NC86-20)	OCT. 7, 1983
NORTH CAROLINA	NC83-1082	(NC86-21)	OCT. 7, 1983
NORTH CAROLINA	NC83-1075	(NC86-22)	OCT. 7, 1983
NORTH CAROLINA	NC83-1077	(NC86-23)	OCT. 7, 1983
NORTH CAROLINA	NC83-1081	(NC86-24)	OCT. 7, 1983
NORTH CAROLINA	NC83-1076	(NC86-25)	OCT. 7. 1983
NORTH CAROLINA	NC81-1268	(NC86-26)	JULY 17, 1981
NORTH CAROLINA	NC81-1249	(NC86-27)	JULY 19, 1981
NORTH CAROLINA	NC81-1245	(NC86-28)	JUNE 12, 1981
NORTH CAROLINA	NC81-1279	(NC86-29)	AUG. 21, 1981
NORTH CAROLINA	NC80-1058	(NC86-30)	FEB. 29, 1980
NORTH CAROLINA	NC81-1311	(NC86-31)	NOV. 13, 1981
NORTH DAKOTA	ND85-5009	(ND86-1)	MAR. 1, 1985
NORTH DAKOTA	ND84-5032	(ND86-2)	OCT. 19, 1984
OHIO	OH83-5125	(OH86-1)	DEC. 23, 1983
OHIO	OH85-5026	(OH86-2)	MAY 24, 1985
OHIO	OH83-5123	(OH86-3)	DEC. 2, 1983
OHIO	OH84-5024	(OH86-4)	AUG. 24, 1984
OHIO	OH83-2002	(OH86-5)	JAN. 21, 1983
OHIO	OH83-2042	(OH86-6)	MAY 20, 1983
OHIO	OH82-2027	(OH86-7)	APR. 9. 1982

OHIO	OH81-2011	(OH86-8)	APR. 10, 1981
OHIO	OH82-2051	(OH86-9)	OCT. 29, 1982
OHIO	OH83-2044	(OH86-10)	JUNE 10, 1983
OHIO	OH81-2012	(OH86-11)	APR. 10, 1981
OHIO	OH83-2027	(OH86-12)	MAR. 25, 1983
OHIO	OH83-2045	(OH86-13)	JUNE 10, 1983
OHIO	OH83-2046	(OH86-14)	JUNE 10, 1983
OHIO	OH80-2060	(OH86-15)	AUG. 8, 1980
OHIO	OH81-2019	(OH86-16)	APR. 10, 1981
OHIO	OH82-2053	(OH86-17)	OCT. 29, 1982
OHIO	OH83-2004	(OH86-18)	JAN. 21, 1983
OHIO	OH83-2047	(OH86-19)	JUNE 10, 1983
OHIO	OH82-2048	(OH86-20)	OCT. 1, 1982
OHIO	OH82-2054	(OH86-21)	OCT. 29, 1982
OHIO	OH83-2005	(OH86-22)	JAN. 21, 1983
OHIO	OH82-2055	(OH86-23)	OCT. 29, 1982
OHIO	OH85-5023	(OH86-24)	MAY 17, 1985
OHIO	OH81-2018	(OH86-25)	APR. 10, 1981
OHIO	OH83-2048	(OH86-26)	JUNE 10, 1983
OHIO	OH83-2049	(OH86-27)	JUNE 10, 1983
OHIO	OH83-5124	(OH86-28)	DEC. 2, 1983
OHIO	OH85-5028	(OH86-29)	JUNE 21, 1985
OKLAHOMA	OK85-4042	(OK86-1)	OCT. 4, 1985
OKLAHOMA	OK85-4041	(OK86-2)	OCT. 4, 1985
OKLAHOMA	OK79-4030	(OK86-3)	FEB. 23, 1979
OKLAHOMA	OK83-4020	(OK86-4)	FEB. 18, 1983
OKLAHOMA	OK83-4072	(OK86-5)	OCT. 21, 1983
OKLAHOMA	OK83-4073	(OK86-6)	OCT. 21, 1983
OKLAHOMA	OK83-4017	(OK86-7)	JAN. 28, 1983
OKLAHOMA	OK82-4018	(OK86-8)	APR. 23, 1982
OKLAHOMA	OK79-4088	(OK86-9)	OCT. 5, 1979
OKLAHOMA	OK79-4087	(OK86-10)	SEPT. 28, 1979
OKLAHOMA	OK85-4002	(OK86-11)	FEB. 15, 1985
OKLAHOMA	OK83-4034	(OK86-12)	MAY 6, 1983
OKLAHOMA	OK85-4052	(OK86-13)	NOV. 29, 1985
OKLAHOMA	OK85-4051	(OK86-14)	NOV. 29, 1985
OREGON	OR85-5030	(OR86-1)	JUNE 28, 1985
OREGON	OR83-5111	(OR86-2)	JUNE 10, 1983
OREGON	OR83-5106	(OR86-3)	MAR. 18, 1983
PENNSYLVANIA	PA84-3004	(PA86-1)	FEB. 17, 1984
PENNSYLVANIA	PA84-3042	(PA86-2)	DEC. 14, 1984
PENNSYLVANIA	PA85-3029	(PA86-3)	JUNE 21, 1985
PENNSYLVANIA	PA85-3034	(PA86-4)	AUG. 23, 1985
PENNSYLVANIA	PA85-3012	(PA86-5)	MAR. 8, 1985
PENNSYLVANIA	PA85-3035	(PA86-6)	JULY 12, 1985
PENNSYLVANIA	PA85-3017	(PA86-7)	APR. 5, 1985
PENNSYLVANIA	PA84-3037	(PA86-8)	OCT. 5, 1984
PENNSYLVANIA	PA85-3054	(PA86-9)	OCT. 11, 1985
PENNSYLVANIA	PA85-3030	(PA86-10)	JUNE 21, 1985
PENNSYLVANIA	PA83-3053	(PA86-11)	NOV. 25, 1983
PENNSYLVANIA	PA84-3002	(PA86-12)	FEB. 10, 1984
PENNSYLVANIA	PA84-3026	(PA86-13)	JULY 13, 1984
PENNSYLVANIA	PA85-3037	(PA86-14)	AUG. 9, 1985
PENNSYLVANIA	PA84-3003	(PA86-15)	FEB. 10, 1984
PENNSYLVANIA	PA83-3051	(PA86-16)	NOV. 25, 1983

PENNSYLVANIA	PA82-3028	(PA86-17)	SEPT. 10, 1982
PENNSYLVANIA	PA83-3052	(PA86-18)	NOV. 25, 1983
PENNSYLVANIA	PA82-3012	(PA86-19)	MAR. 5, 1982
PENNSYLVANIA	PA82-3010	(PA86-20)	MAR. 15, 1982
PENNSYLVANIA	PA82-3011	(PA86-21)	MAR. 12, 1982
PENNSYLVANIA	PA81-3091	(PA86-22)	DEC. 28, 1981
PENNSYLVANIA	PA84-3049	(PA86-23)	DEC. 21, 1984
PENNSYLVANIA	PA84-3035	(PA86-24)	SEPT. 21, 1984
PUERTO RICO	PR83-3031	(PR86-1)	JULY 29, 1983
PUERTO RICO	PR83-3034	(PR86-2)	AUG. 5, 1983
PUERTO RICO	PR83-3037	(PR86-3)	AUG. 5, 1983
RHODE ISLAND	RI84-3043	(RI86-1)	NOV. 30, 1984
SOUTH CAROLINA	SC79-1020	(SC86-1)	FEB. 2, 1979
SOUTH CAROLINA	SC81-1150	(SC86-2)	DEC. 30, 1980
SOUTH CAROLINA	SC80-1049	(SC86-3)	FEB. 8, 1980
SOUTH CAROLINA	SC83-1051	(SC86-4)	JUNE 24, 1983
SOUTH CAROLINA	SC79-1047	(SC86-5)	MAR. 16, 1979
SOUTH CAROLINA	SC83-1052	(SC86-6)	JUNE 24, 1983
SOUTH CAROLINA	SC79-1045	(SC86-7)	MAR. 9, 1979
SOUTH CAROLINA	SC79-1037	(SC86-8)	MAR. 9, 1979
SOUTH CAROLINA	SC79-1062	(SC86-9)	APR. 6, 1979
SOUTH CAROLINA	SC84-1018	(SC86-10)	JUNE 22, 1984
SOUTH CAROLINA	SC85-3048	(SC86-11)	SEPT. 6, 1985
SOUTH CAROLINA	SC80-1057	(SC86-12)	FEB. 29, 1980
SOUTH CAROLINA	SC80-1092	(SC86-13)	AUG. 22, 1980
SOUTH CAROLINA	SC82-1046	(SC86-14)	SEPT. 10, 1982
SOUTH CAROLINA	SC80-1113	(SC86-15)	OCT. 17, 1980
SOUTH CAROLINA	SC81-1153	(SC86-16)	JUNE 26, 1981
SOUTH CAROLINA	SC82-1045	(SC86-17)	SEPT. 10, 1982
SOUTH CAROLINA	SC81-1210	(SC86-18)	APR. 24, 1981
SOUTH CAROLINA	SC81-1242	(SC86-19)	JUNE 5, 1981
SOUTH CAROLINA	SC85-3050	(SC86-20)	SEPT. 6, 1985
SOUTH CAROLINA	SC85-3049	(SC86-21)	SEPT. 6, 1985
SOUTH DAKOTA	SD84-5000	(SD86-1)	JAN. 27, 1984
SOUTH DAKOTA	SD85-5043	(SD86-2)	NOV. 29, 1985
TENNESSEE	TN84-1024	(TN86-1)	AUG. 31, 1984
TENNESSEE	TN84-1005	(TN86-2)	MAR. 9, 1984
TENNESSEE	TN84-1023	(TN86-3)	AUG. 31, 1984
TENNESSEE	TN83-1087	(TN86-4)	NOV. 25, 1983
TENNESSEE	TN83-1088	(TN86-5)	NOV. 25, 1983
TENNESSEE	TN80-1114	(TN86-6)	OCT. 24, 1980
TENNESSEE	TN79-1052	(TN86-7)	MAR. 23, 1979
TENNESSEE	TN79-1097	(TN86-8)	JUNE 1, 1979
TENNESSEE	TN80-1100	(TN86-9)	AUG. 22, 1980
TENNESSEE	TN81-1189	(TN86-10)	MAR. 6, 1981
TENNESSEE	TN79-1096	(TN86-11)	JUNE 1, 1979
TENNESSEE	TN81-1259	(TN86-12)	JULY 6, 1981
TENNESSEE	TN81-1263	(TN86-13)	JULY 6, 1981
TENNESSEE	TN81-1272	(TN86-14)	JULY 24, 1981
TENNESSEE	TN81-1243	(TN86-15)	JUNE 12, 1981
TENNESSEE	TN85-1001	(TN86-16)	JAN. 11, 1985
TEXAS	TX84-4037	(TX86-1)	MAY 25, 1984
TEXAS	TX85-4003	(TX86-2)	FEB. 22, 1985
TEXAS	TX85-4013	(TX86-3)	MAY 10, 1985
TEXAS	TX85-4010	(TX86-4)	MAY 10, 1985

TEXAS	TX84-4028	(TX86-5)	MAY 4, 1984
TEXAS	TX83-4048	(TX86-6)	JUNE 24, 1983
TEXAS	TX85-4018	(TX86-7)	JUNE 14, 1985
TEXAS	TX83-4075	(TX86-8)	OCT. 21, 1983
TEXAS	TX83-4061	(TX86-9)	AUG. 26, 1983
TEXAS	TX85-4001	(TX86-10)	JAN. 25, 1985
TEXAS	TX84-4056	(TX86-11)	SEPT. 21, 1984
TEXAS	TX84-4058	(TX86-12)	OCT. 5, 1984
TEXAS	TX80-4074	(TX86-13)	SEPT. 26, 1980
TEXAS	TX85-4050	(TX86-14)	NOV. 15, 1985
TEXAS	TX84-4047	(TX86-15)	AUG. 10, 1984
TEXAS	TX84-4004	(TX86-16)	FEB. 3, 1984
TEXAS	TX82-4045	(TX86-17)	SEPT. 24, 1982
TEXAS	TX84-4045	(TX86-18)	AUG. 10, 1984
TEXAS	TX84-4015	(TX86-19)	MAR. 16, 1984
TEXAS	TX83-4045	(TX86-20)	JUNE 10, 1983
TEXAS	TX81-4003	(TX86-21)	JAN. 6, 1981
TEXAS	TX82-4034	(TX86-22)	AUG. 20, 1982
TEXAS	TX79-4082	(TX86-23)	SEPT. 21, 1979
TEXAS	TX83-4054	(TX86-24)	JULY 22, 1983
TEXAS	TX83-4055	(TX86-25)	JULY 22, 1983
TEXAS	TX83-4044	(TX86-26)	JUNE 10, 1983
TEXAS	TX85-4039	(TX86-27)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-28)	SEPT. 20, 1985
TEXAS	TX84-4039	(TX86-29)	SEPT. 20, 1985
TEXAS	TX80-4039	(TX86-30)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-31)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-32)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-33)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-34)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-35)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-36)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-37)	SEPT. 20, 1985
TEXAS	TX85-4039	(TX86-38)	SEPT. 20, 1985
UTAH	UT83-5130	(UT86-1)	SEPT. 30, 1983
UTAH	UT81-5112	(UT86-2)	APR. 24, 1981
VERMONT	VT81-3079	(VT86-1)	OCT. 30, 1981
VERMONT	VT84-3029	(VT86-2)	SEPT. 28, 1984
VIRGINIA	VA85-3005	(VA86-1)	JAN. 18, 1985
VIRGINIA	VA85-3002	(VA86-2)	JAN. 18. 1985
VIRGINIA	VA84-3025	(VA86-3)	JULY 6, 1984
VIRGINIA	VA84-3040	(VA86-4)	OCT. 26, 1984
VIRGINIA	VA85-3020	(VA86-5)	APR. 6, 1985
VIRGINIA	VA85-3001	(VA86-6)	JAN. 11, 1985
VIRGINIA	VA85-3028	(VA86-7)	JUNE 7, 1985
VIRGINIA	VA79-3056	(VA86-8)	DEC. 21, 1979
VIRGINIA	VA85-3011	(VA86-9)	MAR. 18, 1985
VIRGINIA	VA80-3068	(VA86-10)	NOV. 7, 1980
VIRGINIA	VA84-3006	(VA86-11)	MAR. 2, 1984
VIRGINIA	VA78-3096	(VA86-12)	NOV. 24, 1978
VIRGINIA	VA85-3003	(VA86-13)	JAN. 18, 1985
VIRGINIA	VA85-3025	(VA86-14)	MAY 3, 1985
VIRGINIA	VA85-3051	(VA86-15)	SEPT. 13, 1985
VIRGINIA	VA85-3004	(VA86-16)	JAN. 11, 1985
VIRGIN ISLANDS	VI82-3032	(VI86-1)	NOV. 12, 1982

VIRGIN ISLANDS	VI83-3025	(VI86-2)	JULY 29, 1983
WASHINGTON	WA85-5039	(WA86-1)	OCT. 11, 1985
WASHINGTON	WA85-5037	(WA86-2)	SEPT. 20, 1985
WASHINGTON	WA85-5038	(WA86-3)	OCT. 4, 1985
WASHINGTON	WA81-5100	(WA86-4)	MAR. 6, 1981
WEST VIRGINIA	WV84-3030	(WV86-1)	AUG. 10, 1984
WEST VIRGINIA	WV83-3022	(WV86-2)	NOV. 18, 1983
WEST VIRGINIA	WV83-3023	(WV86-3)	NOV. 25, 1983
WISCONSIN	WI84-5038	(WI86-1)	OCT. 19, 1984
WISCONSIN	WI84-5037	(WI86-2)	SEPT. 28, 1984
WISCONSIN	WI84-5025	(WI86-3)	AUG. 24, 1984
WISCONSIN	WI84-5027	(WI86-4)	NOV. 2, 1984
WISCONSIN	WI83-2078	(WI86-5)	OCT. 2, 1984
WISCONSIN	WI84-5033	(WI86-6)	NOV. 2, 1984
WISCONSIN	WI84-5028	(WI86-7)	DEC. 21, 1984
WISCONSIN	WI83-2041	(WI86-8)	MAY 15, 1983
WISCONSIN	WI84-5039	(WI86-9)	OCT. 19, 1984
WISCONSIN	WI84-5016	(WI86-10)	JUNE 22, 1984
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WISCONSIN	WI84-5031	(WI86-14)	NOV. 9, 1984
WISCONSIN	WI84-5030	(WI86-15)	NOV. 16, 1984
WISCONSIN	WI84-5029	(WI86-16)	OCT. 12, 1984
WYOMING	WY85-5025	(WY86-1)	MAY 17, 1985

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General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since information is provided in three separate volumes, arranged by State.

Signed at Washington, DC this 26th day of December 1985.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–42–Filed 1–2–86; 8:45 am]

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